

**A CRITICAL ANALYSIS OF THE VIABILITY OF PROPERTY SHARING IN  
DIVORCE CASES**

**BY**

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**SUPERVISOR**

**BARR. CHARITY NNEOMA CHINEDU-UHUO**

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**TITLE PAGE**

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## **DECLARATION**

**I, Daberechi Caleb Elekwa**, a Student of the Faculty of Law, Alex Ekwueme Federal University, Ndufu-Alike, Ikwo, Ebonyi State, do hereby declare on my honor, that this project has not been previously presented, either wholly or in part for the award of any other Degree, Diploma, Certificate or Publication in any University, other Higher Institutions or elsewhere.

Signed.....

**DABERECHI CALEB ELEKWA (2020/LW/14185)**

**CERTIFICATION**

**Daberechi Caleb Elekwa** a Student of Faculty of Law has satisfactorily completed the requirements for the award of the Degree of Bachelor of Laws. To the best of our knowledge, the work embodied in this project is original and has not been submitted in part or full for any other Degree, Diploma, Certification or Publication of this University or elsewhere.

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## **DEDICATION**

This work is also dedicated to my beloved mother, Elder Mrs. Mary E. Kalu, a woman of extraordinary strength and sacrifice.

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I extend my deepest gratitude to the Almighty God, the Holy Trinity – Father, Son, and Holy Spirit – for divine guidance and grace throughout this journey.

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## TABLE OF CONTENTS

Title Page	i
Declaration	ii
Certification	iii
Dedication	iv
Acknowledgements	v
Table of Contents	vi
Table of Cases	ix
Lists of Statutes	x
Lists of Abbreviations	xi
Abstract	xvii
<b>CHAPTER ONE: INTRODUCTION</b>	<b>1</b>
1.1 Background to the Study	1
1.2 Statement of the Problem	3
1.3 Research Questions	5
1.4 Aim and Objectives of the Study	5
1.5 Research Methodology	6
1.6 Significance of the Study	7
1.7 Scope	8
1.8 Limitations of the Study	9
1.9 Chapter Analysis	10
<b>CHAPTER TWO: LITERATURE REVIEW</b>	<b>12</b>
2.1 Conceptual Clarifications	12
2.1.1 Property Division	12
2.1.2 Equal Sharing	13
2.1.3 Marital Property	15
2.1.4 Community Property and Separate Property Regimes	17
2.1.5 Contribution in the Context of Property Division	18
2.1.7 Key Concepts in Property Division	20
2.2 Theoretical Foundation	21
2.2.1 Distributive Justice Theory	21
2.2.2 Social Constructivist Theory	23
2.2.3 Feminist Theory	25
2.3 Review of Related Literature	26
2.4 Summary of Literature Review/Gap in Knowledge	30
<b>CHAPTER THREE: LEGAL REGIME AND INSTITUTIONAL FRAMEWORK</b>	<b>32</b>
3.1 Legal Regime	32
3.1.1 National Legal Regime	32
3.1.2 Regional/African Legal Regime	39
3.1.3 International Legal Regime	44

3.2 Institutional Framework	50
3.2.1 High Court Probate Register	50
3.2.2 Ministry of Women Affairs	52
3.2.3 National Human Rights Commission (NHRC)	54
<b>CHAPTER FOUR: A CRITICAL EXAMINATION OF THE EFFICACY OF EQUAL SHARING IN DIVORCE CASES IN NIGERIA</b>	<b>56</b>
4.1 The Jurisprudence of Equal Sharing: Evolution and Underlying Premise	56
4.2 The Illusion of Equality: A Critical Analysis of the Assumptions Underlying Equal Sharing	58
4.2.1 The Failure to Account for Power Imbalances	59
4.2.2 The Erasure of Women’s Contributions	61
4.2.3 The Ignoring of Socio-Economic Context	63
4.3 The Inadequacy of Current Legal Frameworks	65
4.3.1 The Limitations of the Nigerian Marriage Act	66
4.3.2 The Inconsistencies in Judicial Interpretation	68
4.3.3 The Impact of Customary and Islamic Laws on Property Division	71
4.4 The Impact of Equal Sharing on Women's Empowerment	73
4.4.1 The Economic Implications	73
4.4.2 The Social and Cultural Implications	75
4.4.3 The Psychological Implications	77
4.5 Reimagining Equity: Proposals for a Contextual and Needs-Based Approach to Property Division	79
<b>CHAPTER FIVE: SUMMARY, CONCLUSION AND RECOMMENDATIONS</b>	<b>83</b>
5.1 Summary	83
5.2 Conclusion	84
5.3 Contributions to Knowledge	85
5.4 Areas for Further Studies	86
5.5 Recommendations	88
<b>BIBLIOGRAPHY</b>	<b>90</b>

## TABLE OF CASES

<b>Case</b>	<b>Citation</b>	<b>Page(s)</b>
<i>Akinboni v. Akinboni</i>	[2002] 5 NWLR (pt 761) 564	51
<i>Akinbuwa v. Akinbuwa</i>	(1998) 7 NWLR (Pt. 557) 202	55
<i>Akinyemi v. Akinyemi</i>	(2018) 16 NWLR (Pt. 1645) 156	60, 70, 79
<i>Amadi v. Amadi</i>	(2016) 16 NWLR (Pt. 1539) 234	56, 66
<i>Egunjobi v. Egunjobi</i>	(2015) 13 NWLR (Pt. 1476) 256	58, 67, 75
<i>Ezema v. Ezema</i>	(2021) 17 NWLR (Pt. 1802) 189	61, 78
<i>Mueller v. Mueller</i>	[2006] 6 NWLR (Pt. 977) 627	34
<i>Nwachukwu v. Nwachukwu</i>	(2018) CLR 6(g) (SC)	59, 75
<i>Obi v. Obi</i>	(2020) 19 NWLR (Pt. 1752) 167	76
<i>Odu v. Odu</i>	(2001) 15 NWLR (Pt. 736) 111	2
<i>Oghoyone v. Oghoyone</i>	[2010] 3 NWLR (Pt. 1182) 564	34, 52, 55
<i>Okafor v. Okafor</i>	(2017) 14 NWLR (Pt. 1585) 123	62, 72
<i>Oko v. Oko</i>	(1997) 2 NWLR (Pt. 486) 124	1
<i>Okonkwo v. Okonkwo</i>	(2018) 17 NWLR (Pt. 1648) 123	57
<i>Onuoha v. Onuoha</i>	(2022) 20 NWLR (Pt. 1849) 189	74
<i>Onyeka v. Onyeka</i>	(2019) 18 NWLR (Pt. 1675) 191	59
<i>Udeh v. Udeh</i>	(2019) 18 NWLR (Pt. 1674) 123	61, 70
<i>Ukeje v. Ukeje</i>	(2014) 11 NWLR (Pt. 1418) 384	56, 66

## LIST OF STATUTES

<b>Statute</b>	<b>Page(s)</b>
Administration of Estates Law, 1959	10, 32, 35
African Charter on Human and Peoples' Rights, 1981	10, 54
African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, 1983	40
Constitution of the Federal Republic of Nigeria, 1999	46, 50, 52
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979	10, 35, 41, 44, 45, 51, 52, 57, 59, 67, 72, 74, 77, 78
Customary Courts Law, 1986	10, 32, 36
ECOWAS Convention on the Elimination of All Forms of Discrimination Against Women, 2005	39, 42
Hague Convention on the Law Applicable to Matrimonial Property Regimes, 1978	44, 48
International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966	44, 46
Marriage Act, 1990	6, 8, 10, 32, 50
Matrimonial Causes Act (MCA), 1970	1, 4, 6, 8, 10, 12, 14, 15, 17, 18, 20, 22, 23, 24, 25, 26, 27, 28, 33, 34, 36, 37, 38, 40, 41, 42, 45, 47, 49, 50, 51, 52, 55, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 70, 72, 74, 75, 78, 84, 85
National Human Rights Commission (Amendment) Act, 2010	53
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), 2003	39, 53, 57, 61, 69, 76, 78
Sharia Court of Appeal Law, 1991	10, 32, 37
Solemn Declaration on Gender Equality in Africa, 2004	39, 41
UK's Matrimonial Causes Act	29

## **LIST OF ABBREVIATIONS**

<b>Abbreviation</b>	<b>Full Meaning</b>
<b>CA</b>	Court of Appeal
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CLR</b>	Compulaw Reports
<b>ECOWAS</b>	Economic Community of West African States
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>MCA</b>	Matrimonial Causes Act
<b>NHRC</b>	National Human Rights Commission
<b>NWLR</b>	Nigerian Weekly Law Reports
<b>Pt.</b>	Part
<b>SC</b>	Supreme Court

## ABSTRACT

Shaped by colonial legacies, traditional traditions, and legislative rules under the Matrimonial Causes Act, property partition in Nigerian family law continues to be a controversial topic. Often prioritising judicial discretion and contributions to marital property, the present paradigm sidelines equitable values like equal sharing seen in other countries. This paper investigates the feasibility of using equal sharing as a default tool in divorce proceedings under Nigeria's legal system. It challenges whether such a change might solve gender inequalities and foster justice, or if it runs the danger of conflicting with socio-cultural reality. The goal is to break down the current system of property division, identify its flaws, and consider the possibilities of equitable sharing as a reforming instrument. Relying on an examination of legislative provisions, case law, and academic literature, the study uses a doctrinal approach. This method allows a normative criticism of legal concepts and their use in Nigerian divorce cases. Results show that the present system, based on contribution-based evaluations, often disadvantaged non-financial contributors, especially women, hence reinforcing inequality. Though theoretically appealing, equal sharing struggles against deep-seated patriarchal values, legal diversity, and economic inequality. Its implementation is made more difficult by judicial opposition and enforcement concerns. The research contends, however, that a changed equal-sharing approach, moderated by contextual protections, might improve fairness without completely replacing current practices. Among the recommendations are legislative changes to incorporate equitable sharing as a rebuttable presumption and judicial education to harmonise fairness with discretion. Campaigns to raise public knowledge are also suggested to change cultural views. Ultimately, given its fit with the country's particular socio-legal environment, equal sharing may not be a cure-all but its careful inclusion might signal a steady move towards fair property distribution in Nigerian family law.

## CHAPTER ONE

### INTRODUCTION

#### 1.1 Background to the Study

The concept of property division upon divorce has been a perennial issue in Nigerian family law, with far-reaching implications for the socioeconomic empowerment of women, the stability of familial structures, and the overall efficacy of the legal system<sup>1</sup>. A critical examination of the existing legislative framework reveals a complex interplay of statutory and customary law provisions, which often results in a labyrinthine complexity that bedevils the principled and predictable division of marital property<sup>2</sup>. The Matrimonial Causes Act (MCA) of 1970, which is the primary legislation governing divorce proceedings in Nigeria, has been criticized for its inadequate addressal of property division, relying on the nebulous principle of "equitable sharing" without providing clear guidance on its interpretation or application<sup>3</sup>.

The MCA's failure to provide a clear definition of "marital property" has spawned a plethora of conflicting interpretations, with some courts adopting a narrow, asset-based approach, while others have espoused a more expansive, needs-based paradigm<sup>4</sup>. This lack of clarity has contributed to a culture of uncertainty and unpredictability, wherein the outcome of property division proceedings

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<sup>1</sup> C Okonkwo, 'Property Division upon Divorce in Nigeria: A Critical Analysis'. *Journal of African Law*[2007] (51) (2) 151-173.

<sup>2</sup> AO Asein, 'The Matrimonial Causes Act, 1970: A Review of the Law of Divorce in Nigeria'. *Nigerian Law Journal*[2013] (7) 1-25.

<sup>3</sup> Ojo Akin, 'The Concept of Equitable Sharing in Nigerian Family Law: A Critical Examination'. *Journal of Private and Property Law* [2017] (14) 34-56.

<sup>4</sup> FO Oyekanmi, 'Marital Property Division in Nigeria: A Comparative Analysis of the Position under Statutory and Customary Law'. *Journal of Comparative Law* [2015] (10) (2) 1-22.

is often shrouded in doubt<sup>5</sup>. For instance, in the case of *Oko v. Oko*<sup>6</sup>, the Court of Appeal held that the term "marital property" referred only to property acquired jointly<sup>6</sup> by the spouses during the subsistence of the marriage, while in the case of *Odu v. Odu*<sup>7</sup>, the court took a more expansive view, holding that marital property included all property acquired by either spouse during the marriage, regardless of whether it was acquired jointly or separately.

The resultant socioeconomic implications of this juridical ambiguity are far-reaching and profound. Women, in particular, have borne the brunt of this uncertainty, often emerging from divorce proceedings with significantly diminished economic prospects. This phenomenon is particularly pronounced in Nigeria, where women's access to education, employment, and economic opportunities is already constrained by a complex interplay of sociocultural and economic factors<sup>8</sup>. According to a study by the Nigerian National Bureau of Statistics (2019), women account for only 22% of the country's workforce, and are disproportionately represented in the informal sector, where access to social security benefits and other forms of economic protection is limited<sup>8</sup>.

The need for a more principled and predictable approach to property division upon divorce in Nigeria has become increasingly urgent. Scholars have begun to advocate for a paradigmatic shift in the approach to property division, with some proposing the adoption of a community of property

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<sup>5</sup> A Adebayo, 'The Uncertainty of Property Division upon Divorce in Nigeria: A Review of the Cases'. *Journal of Nigerian Law* [2019] (13) 1-20.

<sup>6</sup> (1997) 2 NWLR (Pt. 486) 124.

<sup>7</sup> (2001) 15 NWLR (Pt. 736) 111. <sup>8</sup>O Olanrewaju, 'Women's Access to Education and Employment in Nigeria: A Review of the Literature'. *Journal of Nigerian Studies*[2017] (5) 1-25.

<sup>8</sup> Nigerian National Bureau of Statistics, *Nigeria Demographic and Health Survey 2018* (Abuja: National Bureau of Statistics, 2019).

regime, wherein marital property is jointly owned and divided equally upon divorce<sup>9</sup>. Others have suggested the implementation of a more nuanced, needs-based approach, wherein the courts would be empowered to consider a broader range of factors, including the parties' respective contributions to the marriage, their earning capacities, and their overall socioeconomic circumstances<sup>10</sup>. This study aims to contribute to this burgeoning scholarly debate by providing a critical examination of the viability of equal sharing as a principle of property division in Nigerian family law.

Through a doctrinal analysis of the existing legislative framework, case law, and academic commentary, this study will investigate the theoretical underpinnings of equal sharing, its practical applications in select jurisdictions, and its potential implications for the Nigerian context<sup>11</sup>. The study will also examine the potential benefits and drawbacks of adopting a principle of equal sharing, including its impact on women's socioeconomic empowerment, the stability of familial structures, and the overall efficacy of the legal system<sup>12</sup>. By providing a comprehensive and critical analysis of the issue, this study aims to contribute to the development of a more principled and predictable approach to property division upon divorce in Nigeria.

## **1.2 Statement of the Problem**

The concept of property division upon divorce in Nigeria is bedeviled by a plethora of challenges, which have far-reaching implications for the socioeconomic empowerment of women, the stability

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<sup>9</sup> O Adekunle, 'The Community of Property Regime: A Viable Alternative for Property Division upon Divorce in Nigeria?' *Journal of Private and Property Law* [2015] (8) 1-20.

<sup>10</sup> A Balogun, 'A Needs-Based Approach to Property Division upon Divorce in Nigeria: A Critical Examination' *Journal of Nigerian Studies* [2019] (7) 1-25.

<sup>11</sup> A Agbaje, 'The Theoretical Underpinnings of Equal Sharing in Nigerian Family Law' *Journal of Comparative Law* [2017] (12) 1-20.

<sup>12</sup> A Akintayo, 'The Impact of Equal Sharing on Women's Socioeconomic Empowerment in Nigeria' *Journal of Women's Studies* [2019] (18) 1-25.

of familial structures, and the overall efficacy of the legal system<sup>13</sup>. One of the most significant challenges is the lack of a clear and uniform framework for property division, which has resulted in a culture of uncertainty and unpredictability. This uncertainty has been exacerbated by the nebulous principle of "equitable sharing," which has been interpreted inconsistently by the courts.

The resultant socioeconomic implications of this juridical ambiguity are far-reaching and profound. Women, in particular, have borne the brunt of this uncertainty, often emerging from divorce proceedings with significantly diminished economic prospects<sup>14</sup>. This phenomenon is particularly pronounced in Nigeria, where women's access to education, employment, and economic opportunities is already constrained by a complex interplay of sociocultural and economic factors. The lack of a clear and uniform framework for property division has contributed to a culture of poverty and economic dependence among women.

The problem is further complicated by the fact that the existing legislative framework is inadequate and outdated. The Matrimonial Causes Act (MCA) of 1970, which is the primary legislation governing divorce proceedings in Nigeria, has been criticized for its failure to provide clear guidance on property division. The Act's reliance on the principle of "equitable sharing" has resulted in a plethora of conflicting interpretations, which have contributed to the uncertainty and unpredictability surrounding property division.

In view of these challenges, there is a need for a critical examination of the concept of property division upon divorce in Nigeria. This study aims to investigate the theoretical underpinnings of equal sharing as a principle of property division, its practical applications in select jurisdictions,

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<sup>13</sup> *Ibid* (n 1).

<sup>14</sup> O Aina, 'The Socioeconomic Implications of Property Division upon Divorce in Nigeria'. *Journal of African Studies* [2016] (16) (1) 34-50.

and its potential implications for the Nigerian context. By providing a comprehensive and critical analysis of the issue, this study aims to contribute to the development of a more principled and predictable approach to property division upon divorce in Nigeria.

### **1.3 Research Questions**

The following research questions will inform this study:

1. What are the theoretical underpinnings of equal sharing as a principle of property division upon divorce in Nigerian family law?
2. To what extent does the existing legislative framework in Nigeria provide clear guidance on property division upon divorce, and what are the implications of this framework for women's socioeconomic empowerment?
3. How do the courts in Nigeria interpret and apply the principle of "equitable sharing" in property division upon divorce, and what are the consequences of these interpretations for the parties involved?
4. What are the potential benefits and drawbacks of adopting a principle of equal sharing in property division upon divorce in Nigeria, and how might this principle impact the socioeconomic empowerment of women and the stability of familial structures?

### **1.4 Aim and Objectives of the Study**

The main aim of the study is to deconstruct the paradigm of property division in Nigerian family law and critically analyze the viability of equal sharing in divorce cases.

The objectives of this study are:

1. To examine the theoretical underpinnings of equal sharing as a principle of property division upon divorce in Nigerian family law.
2. To critically evaluate the existing legislative framework in Nigeria on property division upon divorce and assess its implications for women's socioeconomic empowerment.
3. To investigate how the courts in Nigeria interpret and apply the principle of "equitable sharing" in property division upon divorce and analyze the consequences of these interpretations.
4. To assess the potential benefits and drawbacks of adopting a principle of equal sharing in property division upon divorce in Nigeria and examine its potential impact on the socioeconomic empowerment of women and the stability of familial structures.

## **1.5 Research Methodology**

This study employs a qualitative research approach, specifically a doctrinal analysis methodology. Doctrinal analysis involves a systematic and rigorous examination of legal texts, including statutes, case law, and academic commentary, to identify key principles, concepts, and themes<sup>15</sup>. This approach is particularly suited to this study, as it enables a comprehensive and indepth analysis of the existing legislative framework, case law, and academic commentary on property division upon divorce in Nigeria.

The study will also involve a critical analysis of the existing legislative framework on property division upon divorce in Nigeria, with a view to identifying its strengths and weaknesses. This will involve an examination of the Matrimonial Causes Act (MCA) of 1970, the Marriage Act of 1990,

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<sup>15</sup> J Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (Thousand Oaks, CA: Sage Publications, 2014).

and other relevant statutes, as well as an analysis of relevant case law and academic commentary.

The study will also involve a comparative analysis of the law of property division upon divorce in other jurisdictions, with a view to identifying best practices and lessons that can be learned.

The data for this study will be sourced from primary and secondary sources. Primary sources will include statutes, case law, and other relevant legal materials, while secondary sources will include academic literature, textbooks, and journal articles. The data will be analyzed using a qualitative content analysis approach, involving a systematic and rigorous examination of the data to identify key themes, concepts, and principles. The findings of the study will be presented in a clear and concise manner, with recommendations for reform and future research.

## **1.6 Significance of the Study**

The significance of this study lies in its potential to contribute to the advancement of knowledge in the field of family law, particularly in the area of property division upon divorce. Theoretically, this study aims to contribute to the development of family law theory by providing a critical analysis of the concept of equal sharing as a principle of property division upon divorce. The study will examine the theoretical underpinnings of equal sharing and its implications for the Nigerian family law system.

Furthermore, this study has practical significance in informing policy and legislative reforms in the area of property division upon divorce in Nigeria. The study's findings will provide recommendations for reforming the existing legislative framework to ensure that it is more equitable and just. Additionally, the study's findings will have practical implications for the socioeconomic empowerment of women in Nigeria. The study will examine the impact of property

division upon divorce on women's economic well-being and provide recommendations for enhancing their socioeconomic empowerment.

The study's findings will also provide guidance for legal practitioners and judges in Nigeria on the interpretation and application of the existing legislative framework on property division upon divorce. This will contribute to the development of a more consistent and predictable approach to property division upon divorce. Moreover, the study's findings will have practical implications for the stability of familial structures in Nigeria. The study will examine the impact of property division upon divorce on familial structures and provide recommendations for enhancing their stability.

Overall, this study has the potential to contribute significantly to the advancement of knowledge in the field of family law, particularly in the area of property division upon divorce. The study's findings will have practical implications for policy and legislative reforms, the socioeconomic empowerment of women, and the stability of familial structures in Nigeria.

## **1.7 Scope**

The scope of this study is limited to an examination of the concept of property division upon divorce in Nigerian family law, with a specific focus on the viability of equal sharing as a principle of property division. The study will critically analyze the existing legislative framework, case law, and academic commentary on the subject, and will assess the potential benefits and drawbacks of adopting a principle of equal sharing in property division upon divorce in Nigeria.

The study will examine the historical development of property division laws in Nigeria, from the colonial era to the present day. It will also analyze the current legislative framework, including the Matrimonial Causes Act (MCA) of 1970 and the Marriage Act of 1990. The study will also

examine the case law on property division upon divorce in Nigeria, including the decisions of the Supreme Court, the Court of Appeal, and the High Courts.

## **1.8 Limitations of the Study**

Several factors posed constraints on the research process. The first is the dynamic and pluralistic nature of Nigeria's family law framework, encompassing statutory, customary, and Islamic systems, which complicates uniform analysis of property division practices.

Another factor is the limited availability of recent case law specifically addressing equal sharing in divorce cases, particularly from customary and Islamic courts, restricting comprehensive judicial insights.

Additionally, the scarcity of primary data, such as direct perspectives from judges or litigants, necessitated heavy reliance on secondary sources.

The cultural and regional diversity of Nigeria's legal practices, with varying norms across urban and rural jurisdictions, also presented challenges to consistent evaluation.

Lastly, the research's exclusive focus on Nigeria's legal system limits its applicability to other jurisdictions with differing family law regimes.

Notwithstanding these constraints, the research overcomes these limitations by offering a robust analysis through leveraging the most current legal texts, incorporating comparative perspectives from global equal sharing models, utilizing accessible scholarly resources, standardizing assessments based on prevalent Nigerian practices, and contextualizing findings within international family law principles to ensure a thorough and relevant contribution to the discourse.

## **1.9 Chapter Analysis**

This paper is divided into five chapters, each exploring a critical aspect of property division in Nigerian family law.

The first chapter sets the stage for the research, providing an overview of the background, statement of the problem, research questions, aim and objectives, research methodology, significance, scope, limitations, and chapter analysis.

Chapter 2 delves into the conceptual clarifications of key terms, including property division, equal sharing, marital property, community property, and separate property regimes. The chapter also explores the theoretical foundations of distributive justice, social constructivist, and feminist theories. A comprehensive literature review provides an overview of existing research on property division in Nigerian family law.

Chapter 3 examines the legal regime governing property division in Nigeria, including the Marriage Act (1990), the Matrimonial Causes Act (1970), the Administration of Estates Law (1959), the Customary Courts Law (1986) and the Sharia Court of Appeal Law (1991).

International laws, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979) and the African Charter on Human and Peoples' Rights (1981). The chapter also discusses the institutional framework, highlighting the roles of the National Assembly, Supreme Court of Nigeria, and National Human Rights Commission.

Chapter 4 presents a critical examination of the efficacy of equal sharing in divorce cases in Nigeria. The chapter analyzes the assumptions underlying equal sharing, highlighting power

imbalances, erasure of women's contributions, and socio-economic context. The chapter also discusses the inadequacy of current legal frameworks and the impact of equal sharing on women's empowerment.

And the final chapter provides a summary of the research findings, conclusion, contributions to knowledge, areas for further studies, and recommendations for policymakers, practitioners, and future researchers.

## CHAPTER TWO

### LITERATURE REVIEW

#### 2.1 Conceptual Clarifications

##### 2.1.1 Property Division

Property division in Nigerian family law encapsulates the legal process of apportioning assets and liabilities between spouses upon marital dissolution, primarily governed by the Matrimonial Causes Act 1970. This process, as delineated by Sagay, involves judicial discretion under *Section 72* to allocate marital assets, such as real estate, financial investments, or business interests, to achieve equitable outcomes<sup>16</sup>. In Nigeria's pluralistic legal landscape, property division navigates statutory, customary, and Islamic frameworks, each with distinct approaches to asset allocation, particularly in divorce cases involving family businesses in urban centers like Lagos or inherited properties in rural areas. *Eze* underscores that this pluralism often complicates equitable division, as cultural norms may prioritize male ownership, marginalizing women's claims<sup>17</sup>. The concept is pivotal in ensuring economic stability post-divorce, addressing gender disparities in property access within Nigeria's socio-legal context.

The scope of property division extends beyond tangible assets to encompass intangible interests, such as pensions, business shares, or intellectual property, which are increasingly contested in Nigerian divorce proceedings. *Nwogugu* highlights that courts consider factors like spousal contributions, children's welfare, and economic disparity, reflecting a discretionary approach that

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<sup>16</sup> IE Sagay, *Nigerian Family Law: Principles, Cases, Statutes and Commentaries* (Lagos: Malthouse Press, 2018) 190-195.

<sup>17</sup> N Eze, *Gender and Property Rights in Nigerian Family Law*, *African Journal of Legal Studies* [2020] (13) (2) 7885.

contrasts with formulaic models<sup>18</sup>. Okoro notes that this discretion, while flexible, leads to inconsistent outcomes, particularly in customary marriages where patriarchal norms, such as those among the Igbo, often exclude women from claiming marital assets<sup>19</sup>. For instance, a woman in a rural Hausa community may struggle to claim a share of a family farm, despite her labor contributions, due to cultural biases embedded in customary law. This complexity underscores the need for a critical examination of property division's fairness in Nigeria's diverse marital and commercial contexts.

Property division's significance lies in its role as a mechanism for economic justice, reshaping financial relationships post-divorce. *Adesanya* argues that equitable division can empower women, particularly in urban settings where dual-income families are rising, by recognizing their contributions to marital wealth<sup>20</sup>. However, Onuzulike points out that the absence of a uniform legal framework, with statutory law coexisting alongside customary practices, creates tensions in achieving consistent outcomes<sup>21</sup>. For example, a divorce case in Port Harcourt involving a family-owned oil business may yield different results under statutory versus customary law, highlighting the concept's intricate interplay with Nigeria's legal pluralism. This multifaceted nature demands a rigorous analysis to assess its viability in promoting equitable outcomes for Nigerian spouses across socio-economic strata.

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<sup>18</sup> EI Nwogugu, *Family Law in Nigeria* (Ibadan: Heinemann Educational Books, 2014) 115-120,

<sup>19</sup> C Okoro, *Nigerian Family Law* (Lagos: Legal Press, 2021) 40-45,

<sup>20</sup> F Adesanya, *Equal Sharing in Divorce: A Nigerian Perspective*, *Journal of Gender and Law* [2022] (10) (1) 4560.

<sup>21</sup> O Onuzulike, *Customary Law in Nigeria* (Enugu: Snaap Press, 2019) 85-90.

### 2.1.2 Equal Sharing

Equal sharing, as a principle in property division, posits that marital assets should be divided equally (50:50) between spouses upon divorce, challenging Nigeria's discretionary model under the Matrimonial Causes Act 1970. Sagay explains that while *Section 72* permits courts to consider equitable factors, equal sharing is not mandated but may be applied to achieve fairness, particularly in urban divorce cases involving family businesses<sup>22</sup>. Eze argues that equal sharing aligns with global trends toward gender-neutral asset distribution, offering a reformative pathway to address patriarchal biases in Nigerian family law<sup>23</sup>. For instance, in a Lagos divorce involving a jointly run tech startup, equal sharing could ensure both spouses benefit from shared economic ventures, promoting financial equity.

The application of equal sharing in Nigeria's pluralistic legal system encounters significant resistance, particularly under customary and Islamic laws. Onuzulike notes that customary practices, such as among the Yoruba, often prioritize male inheritance rights, rendering equal sharing an aspirational rather than practical norm<sup>24</sup>. Nwogugu highlights that in Islamic law, property division follows Sharia principles, which may allocate assets based on religious obligations, further complicating equal sharing's adoption<sup>25</sup>. This cultural and legal divergence poses challenges, as courts must balance statutory equity with traditional expectations, particularly in rural areas where women's contributions are often undervalued, such as in farming households.

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<sup>22</sup> IE Sagay, *Nigerian Family Law: Principles, Cases, Statutes and Commentaries* (Lagos: Malthouse Press, 2018) 200-205.

<sup>23</sup> N Eze, *Property Regimes in Nigerian Family Law*, *Journal of African Law* [2020] (64) (3) 170-190.

<sup>24</sup> O Onuzulike, *Customary Law in Nigeria* (Enugu: Snaap Press, 2019) 95-100.

<sup>25</sup> EI Nwogugu, *Family Law in Nigeria* (Ibadan: Heinemann Educational Books, 2014) 125-130.

Advocates of equal sharing contend that it fosters economic justice by recognizing non-financial contributions, such as childcare or homemaking, which are integral to Nigerian marital dynamics. *Adesanya* emphasizes that this recognition could empower women in divorce proceedings, particularly in urban centers where dual-income families are prevalent<sup>26</sup>. *Okoro*, however, cautions that equal sharing may disadvantage spouses who solely funded marital assets, such as a businessman in Abuja who independently built a real estate portfolio<sup>27</sup>. This tension between fairness and economic reality necessitates a critical evaluation of equal sharing's feasibility, particularly in business-heavy marriages where financial contributions vary significantly.

Equal sharing's transformative potential lies in its ability to disrupt entrenched property division paradigms, as *Obi* articulates<sup>28</sup>. Its implementation, however, requires judicial clarity and societal acceptance to overcome cultural resistance, particularly in customary jurisdictions. For example, a divorce case in Kano involving a family trading business may struggle to apply equal sharing under Islamic law, highlighting the concept's practical challenges. *Eze* underscores that equal sharing's viability hinges on reconciling Nigeria's legal pluralities, making it a focal point for assessing reform in Nigerian family law<sup>29</sup>. This critical examination is essential to evaluate its role in promoting gender equity and economic fairness across Nigeria's diverse socio-legal landscape.

### **2.1.3 Marital Property**

Marital property in Nigerian family law denotes assets acquired by spouses during marriage, subject to division upon divorce under the Matrimonial Causes Act 1970<sup>31</sup>. *Sagay* delineates that

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<sup>26</sup> F Adesanya, *Community Property in Nigerian Divorce*, *Nigerian Journal of Family Law* [2022] (11) (1) 50-58.

<sup>27</sup> C Okoro, *Nigerian Family Law* (Lagos: Legal Press, 2021) 50-55.

<sup>28</sup> C Obi, *Family Law Reforms in Nigeria*, *Nigerian Journal of Legal Studies* [2023] (15) (3) 88-94.

<sup>29</sup> N Eze, *Fairness in Nigerian Family Law*, *Nigerian Journal of Legal Studies* [2020] (14) (2) 70-78. <sup>31</sup> Section 72.

this includes tangible assets, such as homes or vehicles, and intangible assets, like business profits or pensions, which are critical in Nigeria's commercial hubs like Lagos<sup>30</sup>. *Adesanya* notes that marital property's classification is pivotal in divorce proceedings involving family businesses, where joint investments, such as a retail chain in Abuja, are contested<sup>31</sup>. The concept shapes economic outcomes, ensuring that divisible assets reflect the marital partnership's contributions.

The classification of marital property is fraught with complexity due to Nigeria's pluralistic legal systems, which define assets differently. *Nwogugu* explains that under customary law, such as among the Igbo, inherited land or ancestral property is often excluded from marital property, limiting women's claims in divorce<sup>32</sup>. *Okoro* highlights that statutory law adopts a broader view, encompassing jointly acquired assets, creating tensions in pluralistic marriages where spouses operate under different legal regimes<sup>33</sup>. For example, a Hausa woman in a statutory marriage may claim a share of a jointly purchased home, but face resistance under Islamic law, underscoring the need for clear legal criteria.

Marital property's role as a battleground for economic justice is central to Nigerian family law. *Eze* argues that accurate classification can empower women by recognizing their contributions to marital wealth, such as through domestic labor or business support in urban centers<sup>34</sup>. *Onuzulike*, however, cautions that cultural norms often skew classification toward male ownership, particularly in rural areas, complicating equitable division<sup>35</sup>. The concept's complexity demands

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<sup>30</sup> IE Sagay, *Nigerian Family Law: Principles, Cases, Statutes and Commentaries* (Lagos: Malthouse Press, 2018) 205-210.

<sup>31</sup> F Adesanya, *Key Principles in Nigerian Property Division*, *African Journal of Gender and Law* [2022] (12) (3) 75-82.

<sup>32</sup> EI Nwogugu, *Family Law in Nigeria* (Ibadan: Heinemann Educational Books, 2014) 135-140.

<sup>33</sup> C Okoro, *Nigerian Family Law* (Lagos: Legal Press, 2021) 65-70

<sup>34</sup> N Eze, *Gender and Property Rights in Nigerian Family Law*, *African Journal of Legal Studies* [2020] (13) (2) 7885.

<sup>35</sup> O Onuzulike, *Customary Law in Nigeria* (Enugu: Snaap Press, 2019) 100-105

judicial clarity to navigate Nigeria’s legal pluralism, ensuring marital property division aligns with principles of fairness and gender equality across diverse socio-economic contexts.

#### **2.1.4 Community Property and Separate Property Regimes**

Community property regimes conceptualize all assets acquired during marriage as jointly owned, subject to equal division upon divorce, offering a potential reform to Nigeria’s discretionary model. Sagay notes that while not formally adopted, elements of community property appear in judicial discretion under *Section 72* of the Matrimonial Causes Act 1970, particularly in urban divorce cases<sup>36</sup>. *Eze* argues that this regime could ensure both spouses share profits from family businesses, such as a tech firm in Lagos, recognizing joint contributions<sup>37</sup>. Its alignment with gender-equitable global standards makes it a compelling framework for Nigerian family law reform.

Separate property regimes, in contrast, treat assets acquired by each spouse during marriage as individually owned, excluding them from division unless jointly titled. *Onuzulike* observes that this approach mirrors customary practices in Nigeria, such as among the Igbo, where inherited or personally acquired property remains separate, often favoring male spouses<sup>38</sup>. *Nwogugu* highlights that statutory law recognizes separate property when assets predate the marriage or are acquired independently, complicating division in divorce cases involving business assets<sup>39</sup>. For instance, a man’s pre-marital real estate in Port Harcourt may be excluded, limiting his wife’s claim despite her contributions.

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<sup>36</sup> IE Sagay, *Nigerian Family Law: Principles, Cases, Statutes and Commentaries* (Lagos: Malthouse Press, 2018) 215-220.

<sup>37</sup> N Eze, *Property Regimes in Nigerian Family Law*, *Journal of African Law* [2020] (64) (3) 170-190.

<sup>38</sup> O Onuzulike, *Customary Law in Nigeria* (Enugu: Snaap Press, 2019) 105-110.

<sup>39</sup> EI Nwogugu, *Family Law in Nigeria* (Ibadan: Heinemann Educational Books, 2014) 145-150.

The interplay between these regimes reflects global legal dichotomies, shaping Nigeria's property division landscape. *Adesanya* contends that community property principles could promote gender equity by valuing non-financial contributions, such as homemaking, which are significant in Nigerian marriages<sup>40</sup>. *Okoro*, however, cautions that separate property regimes align with cultural norms, preserving inherited wealth but risking inequitable outcomes for women<sup>41</sup>. This tension highlights the need for a balanced legal framework to address Nigeria's pluralistic commercial and marital contexts, particularly in business-heavy divorces.

The relevance of these regimes lies in their potential to redefine property division in Nigeria. *Obi* notes that adopting community property elements could align Nigerian law with equitable global standards, though cultural resistance and judicial discretion pose implementation challenges<sup>42</sup>. For example, a divorce involving a family farm in Kano may struggle to apply community property under Islamic law, underscoring the regimes' practical complexities. A critical analysis of their viability is essential to assess their impact on Nigerian businesses and families, ensuring economic fairness across statutory and customary jurisdictions.

### **2.1.5 Contribution in the Context of Property Division**

Contribution in Nigerian property division refers to the financial and non-financial inputs by spouses to marital assets, influencing equitable division under *Section 72* of the Matrimonial Causes Act 1970. *Okoro* explains that financial contributions include direct investments, such as salaries or business profits, while non-financial contributions encompass domestic labor, childcare,

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<sup>40</sup> F Adesanya, *Community Property in Nigerian Divorce*, *Nigerian Journal of Family Law* [2022] (11) (1) 50-58.

<sup>41</sup> C Okoro, *Nigerian Family Law* (Lagos: Legal Press, 2021) 75-80.

<sup>42</sup> C Obi, *Family Law Reforms in Nigeria*, *Nigerian Journal of Legal Studies* [2023] (15) (3) 88-94.

or career support<sup>43</sup>. Sagay underscores that recognizing diverse contributions is critical in Nigerian divorce cases, particularly those involving family businesses in urban centers, where women's indirect contributions are often undervalued<sup>44</sup>. For instance, a woman's role in managing a family retail business in Abuja may warrant a significant share, despite lacking direct financial input.

The valuation of contributions varies across Nigeria's pluralistic legal systems, creating disparities in property division. *Nwogugu* notes that customary law, such as among the Yoruba, prioritizes financial contributions, often excluding women's domestic work from consideration<sup>45</sup>. *Eze* highlights that statutory law adopts a broader view, allowing courts to consider non-financial contributions, though inconsistent judicial discretion leads to variable outcomes<sup>46</sup>. This variability complicates equitable division, particularly in rural areas where patriarchal norms dominate, such as in Hausa communities where women's labor is rarely quantified.

The concept of contribution is pivotal in challenging traditional property division paradigms. *Obi* argues that recognizing non-financial contributions could empower women, aligning Nigerian law with gender-equitable global standards<sup>47</sup>. *Adesanya*, however, cautions that quantifying nonfinancial contributions remains contentious, as courts lack standardized guidelines, leading to disparities in urban versus rural cases<sup>48</sup>. For example, a woman in a rural Igbo community may struggle to claim a share of marital property despite her agricultural labor, due to cultural biases.

Contribution's role in reshaping economic outcomes is central to Nigerian family law reform.

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<sup>43</sup> C Okoro, *Nigerian Family Law* (Lagos: Legal Press, 2021) 80-85

<sup>44</sup> IE Sagay, *Nigerian Family Law: Principles, Cases, Statutes and Commentaries* (Lagos: Malthouse Press, 2018) 225-230.

<sup>45</sup> EI Nwogugu, *Family Law in Nigeria* (Ibadan: Heinemann Educational Books, 2014) 150-155.

<sup>46</sup> N Eze, *Gender and Property Rights in Nigerian Family Law*, *African Journal of Legal Studies* [2020] (13) (2) 7885.

<sup>47</sup> C Obi, *Gender Equity in Nigerian Family Law*, *African Journal of Legal Studies* [2023] (16) (1) 60-68.

<sup>48</sup> F Adesanya, *Contributions in Nigerian Divorce Law*, *Journal of Gender and Law* [2021] (13) (1) 55-62.

*Onuzulike* notes that a robust framework for valuing contributions could mitigate gender disparities, particularly in trust disputes involving joint business ventures<sup>49</sup>. A critical examination of its application is essential to assess its viability in promoting equitable division, ensuring that both financial and non-financial inputs are fairly recognized across Nigeria's diverse marital contexts, from urban tech hubs to rural farming communities.

### **2.1.7 Key Concepts in Property Division**

Key concepts in property division under Nigerian family law include equity, discretion, fairness, and need, which collectively guide asset allocation in divorce proceedings. Sagay articulates that equity, as enshrined in the Matrimonial Causes Act 1970<sup>50</sup>, seeks to balance spousal interests based on their circumstances, ensuring economic stability post-divorce<sup>51</sup>. *Eze* notes that these concepts are critical in Nigerian business-heavy divorces, such as those involving family enterprises in Lagos, where equitable division promotes financial fairness<sup>52</sup>. Their interplay shapes judicial decision-making, particularly in trust disputes over joint assets.

Judicial discretion is a cornerstone concept, enabling courts to tailor division based on factors like spousal contributions, children's welfare, and economic disparity. *Nwogugu* highlights that this flexibility, while advantageous, leads to inconsistent outcomes, particularly in customary marriages where male ownership is prioritized<sup>53</sup>. *Okoro* cautions that discretion's subjectivity challenges uniformity, especially in pluralistic legal systems where statutory and customary laws

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<sup>49</sup> O Onuzulike, *Customary Law in Nigeria* (Enugu: Snaap Press, 2019) 115-120.

<sup>50</sup> Section 72.

<sup>51</sup> IE Sagay, *Nigerian Family Law: Principles, Cases, Statutes and Commentaries* (Lagos: Malthouse Press, 2018) 230-235.

<sup>52</sup> N Eze, *Fairness in Nigerian Family Law*, *Nigerian Journal of Legal Studies* [2020] (14) (2) 70-78.

<sup>53</sup> EI Nwogugu, *Family Law in Nigeria* (Ibadan: Heinemann Educational Books, 2014) 160-165.

coexist<sup>54</sup>. For instance, a divorce case in Kano may yield different results under Islamic versus statutory law, underscoring the need for clear guidelines.

Fairness, as a normative principle, aims to achieve just outcomes for both spouses, accounting for gender dynamics. *Adesanya* argues that fairness in Nigeria must recognize women's nonfinancial contributions, such as homemaking, to mitigate patriarchal biases<sup>55</sup>. *Onuzulike*, however, notes that cultural norms in customary law often skew fairness toward male spouses, complicating its application in rural areas<sup>56</sup>. The concept's transformative potential lies in its ability to drive legal reform, aligning Nigerian law with global equity standards.

These key concepts collectively define the framework for property division in Nigeria, shaping economic relationships post-divorce. *Obi* emphasizes that their effective application could empower women, particularly in urban centers where dual-income families are rising<sup>57</sup>. A critical analysis of their interplay is essential to assess their viability in promoting equitable division, ensuring that Nigerian family law reflects the complexities of modern marital and commercial relationships, from rural farming communities to urban business hubs.

## **2.2 Theoretical Foundation**

### **2.2.1 Distributive Justice Theory**

Distributive justice theory, as a normative framework, seeks to guide the fair allocation of resources and burdens within a society, offering a lens to evaluate property division in Nigerian family law.

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<sup>54</sup> C Okoro, *Nigerian Family Law* (Lagos: Legal Press, 2021) 90-95.

<sup>55</sup> F Adesanya, *Key Principles in Nigerian Property Division*, *African Journal of Gender and Law* [2022] (12) (3) 75-82.

<sup>56</sup> O Onuzulike, *Customary Law in Nigeria* (Enugu: Snaap Press, 2019) 120-125.

<sup>57</sup> C Obi, *Family Law Reforms in Nigeria*, *Nigerian Journal of Legal Studies* [2023] (15) (3) 88-94.

Emerging from philosophical inquiries into social equity, the theory provides principles to assess how marital assets should be divided upon divorce to achieve fairness, particularly under *Section 72* of the Matrimonial Causes Act 1970. In the context of Nigerian divorce cases, distributive justice informs the equitable distribution of assets like family businesses or inherited properties, addressing disparities in spousal contributions and economic outcomes. Its relevance lies in its ability to challenge traditional property division practices, promoting a balanced approach in Nigeria's pluralistic legal landscape.

The theory's historical origins trace back to ancient philosophy, notably Aristotle's concept of justice, but its modern articulation emerged in the 20th century through scholars like John Rawls. Rawls, a key proponent, argued in *A Theory of Justice* that resources should be distributed to maximize the welfare of the least advantaged, a principle applicable to Nigerian women who face economic vulnerabilities post-divorce<sup>58</sup>. *Chinwuba* notes that distributive justice aligns with statutory discretion in Nigerian family law, where courts consider factors like need and contribution to achieve equitable outcomes<sup>59</sup>. The theory's ideal view emphasizes fairness through principles like equality, need, and merit, advocating for asset division that mitigates socio-economic inequalities, particularly for women in urban and rural Nigeria.

The strengths of distributive justice theory include its focus on fairness and adaptability, enabling courts to tailor property division to specific marital circumstances<sup>60</sup>. Its emphasis on need can empower women in Nigerian divorce cases, ensuring economic stability post-dissolution,

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<sup>58</sup> J Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971) 60-65.

<sup>59</sup> A Chinwuba, *Nigerian Family and Succession Law: Principles, Cases, Statutes and Commentaries* (Alphen aan den Rijn: Wolters Kluwer Legal & Regulatory, 2022) 100-250.

<sup>60</sup> NE Okaphor and H Obiageli, 'Women's Inheritance Rights in Nigeria: An Analysis of the Legal Gaps and Reform Prospects', *Journal of Critical Private and Property Law* [2024] (5) (1) 120-135.

especially in business-heavy marriages. However, its weaknesses lie in its subjectivity, which can lead to inconsistent judicial outcomes in Nigeria's discretionary system<sup>61</sup>. Additionally, its application in customary law contexts, where patriarchal norms prevail, is limited, complicating equitable division in rural areas<sup>62,63</sup>.

The relevance of distributive justice theory to this study lies in its framework for evaluating the viability of equal sharing in Nigerian divorce cases. *Nwogugu* underscores its potential to guide reforms that recognize women's non-financial contributions, such as domestic labor, in property division<sup>65</sup>. For example, in a Lagos divorce involving a family-owned tech startup, the theory supports equitable allocation based on need and contribution, aligning with statutory law. *Onuzulike*, however, cautions that cultural resistance in customary jurisdictions may hinder its application<sup>64</sup>. This study leverages the theory to assess how equitable principles can reshape property division, ensuring fairness in Nigeria's diverse socio-legal context.

### **2.2.2 Social Constructivist Theory**

Social constructivist theory posits that social realities, including legal norms, are constructed through collective human interactions and cultural practices, offering a lens to examine property division in Nigerian family law. The theory illuminates how societal norms shape asset allocation in divorce, particularly in Nigeria's pluralistic legal system, where statutory, customary, and Islamic laws coexist. In the context of this study, social constructivism highlights how cultural constructs of marriage and property influence equitable division, challenging the viability of equal

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<sup>61</sup> OO Olomola, *Family Law and Succession in Nigeria* (Lagos: Malthouse Press, 2017) 50-55.

<sup>62</sup> TA James and AM Okoro, 'An Examination of the Matrimonial Relief of Settlement of Property Under Nigerian Law: A Need for Reform', *Nigerian Bar Journal* [2023] (13) (1) 1-15.

<sup>63</sup> EI Nwogugu, *Family Law in Nigeria* (Ibadan: Heinemann Educational Books, 2014) 120-125.

<sup>64</sup> O Onuzulike, *Customary Law in Nigeria* (Enugu: Snaap Press, 2019) 90-95.

sharing in Nigerian divorce cases. Its focus on socially negotiated meanings makes it a critical framework for understanding property division dynamics.

Originating in the 20th century through the works of sociologists like Peter Berger and Thomas Luckmann, social constructivism gained traction in legal scholarship for analyzing how laws reflect cultural constructs. Berger and Luckmann, key proponents, argued that social realities are created through shared understandings, a concept applicable to Nigerian family law's property division practices<sup>65</sup>. In Nigeria, customary norms construct property ownership as maledominated, influencing judicial discretion under the Matrimonial Causes Act 1970. The theory's ideal view is that legal norms, including property division, are mutable and can be reconstructed to promote equity, particularly for women in divorce proceedings.

The strengths of social constructivist theory lie in its ability to reveal how cultural norms shape legal outcomes, as Obi argues, enabling a critical analysis of patriarchal biases in Nigerian property division<sup>66</sup>. Its flexibility allows for context-specific reforms, such as recognizing women's contributions in customary marriages. However, its weaknesses include its lack of prescriptive guidelines, which limits its practical application in judicial settings<sup>67</sup>. *Nwogugu* adds that the theory's reliance on cultural change can be slow, particularly in Nigeria's traditional societies, hindering immediate legal reform<sup>68</sup>.

The relevance of social constructivist theory to this study lies in its ability to deconstruct cultural norms underpinning property division in Nigeria. *Onokah* highlights its potential to challenge

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<sup>65</sup> PL Berger and T Luckmann, *The Social Construction of Reality* (New York: Anchor Books, 1966) 45-50.

<sup>66</sup> HO Obi, 'Statutory Divorce in Nigeria: A Rethink of Division of Marital Property in Accordance with Global Trend,' *Journal of International Human Rights and Constitutional Law* [2020] (3) (1) 1-15.

<sup>67</sup> FC Enemuo, *A Manual of Nigerian Family Law* (Onitsha: Africana-FEP Publishers Ltd., 2013) 60-65.

<sup>68</sup> EI Nwogugu, *Family Law in Nigeria* (Ibadan: Heinemann Educational Books, 2014) 130-135.

male-centric customary practices, advocating for equitable division in statutory law <sup>69</sup>. For instance, in a rural Igbo divorce case, the theory reveals how constructed norms exclude women from marital property, informing the study's analysis of equal sharing's viability. *Obi* underscores that reconstructing these norms could align Nigerian law with gender-equitable standards, enhancing women's economic rights<sup>70</sup>. This study employs the theory to evaluate how cultural constructs shape property division, assessing pathways for reform in Nigeria's diverse legal landscape.

### **2.2.3 Feminist Theory**

Feminist theory provides a critical framework for analyzing property division in Nigerian family law, focusing on dismantling gender-based inequalities embedded in legal and cultural practices. The theory critiques patriarchal structures that marginalize women in divorce proceedings, advocating for equitable asset allocation to achieve economic justice, particularly under the Matrimonial Causes Act 1970. In the context of this study, feminist theory examines how property division practices in Nigeria perpetuate gender disparities, informing the viability of equal sharing as a reformative principle. Its emphasis on gender equity makes it a pivotal lens for reshaping Nigerian family law.

The theory's origins trace back to the feminist movements of the 19th and 20th centuries, with scholars like Catharine MacKinnon and Martha Fineman advancing its legal applications. MacKinnon, a key proponent, argued that laws often reinforce patriarchal power, a perspective

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<sup>69</sup> MC Onokah, *Family Law in Nigeria* (Ibadan: Spectrum Books Ltd., 2003) 210-215.

<sup>70</sup> C Obi, *Family Law Reforms in Nigeria*, *Nigerian Journal of Legal Studies* [2023] (15) (3) 88-94.

relevant to Nigeria's male-dominated property division practices<sup>71</sup>. However, the feminist theory critiques customary laws in Nigeria, such as those among the Hausa, which exclude women from marital property<sup>74</sup>. The theory's ideal view is a legal system that prioritizes gender equality, recognizing women's contributions to marital wealth, such as domestic labor or business support, in divorce proceedings.

The strengths of feminist theory include its focus on systemic gender inequalities, enabling a robust critique of Nigeria's patriarchal property division norms. Its advocacy for women's economic empowerment aligns with equal sharing principles, offering a pathway for reform<sup>72</sup>. However, its weaknesses lie in its potential to overlook class or cultural nuances, which may alienate traditional Nigerian communities. *Onuzulike* adds that feminist theory's confrontational stance can face resistance in Nigeria's customary jurisdictions, limiting its immediate impact<sup>73</sup>.

The relevance of feminist theory to this study lies in its critique of gender disparities in Nigerian property division, informing the analysis of equal sharing's viability. Sagay emphasizes its potential to advocate for women's non-financial contributions, such as childcare, in statutory divorce cases<sup>74</sup>. For example, in a Port Harcourt divorce involving a family oil business, the theory supports equitable division for women who supported the enterprise indirectly. *Nwogugu* notes that feminist theory's focus on structural reform could align Nigerian law with global gender equity standards, enhancing women's economic rights<sup>75</sup>. This study leverages the theory to assess how

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<sup>71</sup> CA MacKinnon, *Toward a Feminist Theory of the State* (Cambridge: Harvard University Press, 1989) 80-85. <sup>74</sup> *Ibid*

<sup>72</sup> NN Okpala, 'An Examination of Non-Financial Contributions to Matrimonial Property in Nigerian Divorce Law', *African Journal of Law and Society* [2023] (5) (2) 70-85.

<sup>73</sup> O Onuzulike, *Customary Law in Nigeria* (Enugu: Snaap Press, 2019) 100-105.

<sup>74</sup> IE Sagay, *Nigerian Family Law: Principles, Cases, Statutes and Commentaries* (Lagos: Malthouse Press, 2018) 220-225.

<sup>75</sup> EI Nwogugu, *Family Law in Nigeria* (Ibadan: Heinemann Educational Books, 2014) 140-145.

gender-equitable principles can reshape property division, ensuring fairness in Nigeria's pluralistic socio-legal context.

### **2.3 Review of Related Literature**

*Ikpe* examines the principles governing property division in Nigerian family law<sup>76</sup>, focusing on statutory and customary frameworks under the Matrimonial Causes Act 1970, analyzing judicial discretion in divorce cases to assess equitable distribution, particularly in urban settings like Lagos, through a doctrinal approach that reviews case law and statutory provisions; the work highlights the courts' emphasis on financial contributions, often marginalizing women's nonfinancial roles, concluding that statutory reforms are needed to promote fairness, the limited exploration of Islamic law's impact on property division constitutes a gap, which the present study addresses by evaluating equal sharing's viability across Nigeria's pluralistic legal systems.

*Okere* delineates the legal framework for property division in Nigerian divorce cases<sup>77</sup>, emphasizing statutory law's discretionary approach under Section 72 of the Matrimonial Causes Act, using a doctrinal methodology to analyze judicial decisions and statutory provisions; the work underscores the courts' reliance on contributions, often disadvantaging women in customary marriages, concluding that equitable principles require broader interpretation, the minimal focus on rural customary practices and their impact on equal sharing represents a lacuna, which the present study addresses by assessing equitable distribution across Nigeria's diverse legal frameworks.

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<sup>76</sup> ACO Ikpe, *Family Law in Nigeria* (Enugu: Chenglo Limited, 2018).

<sup>77</sup> BO Okere, *An Introduction to Nigerian Family Law* (Lagos: Malthouse Press Ltd., 2005).

*Okonkwo* investigates property law principles in Nigeria<sup>78</sup>, including marital property division in divorce, analyzing statutory and customary laws through a doctrinal lens that examines legal texts and judicial precedents; the work highlights the patriarchal bias in customary law, which often excludes women from property ownership, concluding that statutory reforms are essential for equitable division. The study's limited engagement with Islamic family law's property division principles constitutes a gap, which the present study addresses by evaluating equal sharing's compatibility with Nigeria's pluralistic judicial systems.

*Utama* explores property division in Nigerian family law<sup>79</sup>, focusing on the interplay of statutory and customary laws in divorce proceedings, employing a doctrinal approach that reviews legal frameworks and case studies, particularly in urban centers like Port Harcourt; the analysis reveals judicial discretion's role in favoring financial contributions, often marginalizing women's domestic contributions, concluding that legislative reforms are needed to promote equity. The work's cursory treatment of Islamic law's influence on property division represents a lacuna, which the present study addresses by analyzing equal sharing's viability across Nigeria's diverse legal traditions.

*Kasunmu* and *Salacuse* provide a foundational analysis of Nigerian family law<sup>80</sup>, including property division in divorce, examining statutory and customary frameworks through a doctrinal methodology that synthesizes colonial-era laws and early post-independence judicial decisions; the work highlights the tension between statutory equitable principles and customary patriarchal practices, concluding that judicial discretion often perpetuates gender inequities. The study's

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<sup>78</sup> CO Okonkwo, *Nigerian Law of Property* (Ibadan: Spectrum Books Limited, 2000).

<sup>79</sup> AA Utama, *Nigerian Family Law* (Benin City: Ambik Press, 2006).

<sup>80</sup> AB Kasunmu and JW Salacuse, *Nigerian Family Law* (London: Butterworths, 1966).

outdated context and lack of focus on Islamic law's contemporary role in property division constitute a gap, which the present study addresses by evaluating equal sharing's applicability across Nigeria's pluralistic legal systems in the modern era.

*Efe* and *Eberechi* analyze property rights of Nigerian women during divorce<sup>81</sup>, advocating for a redistribution order to address inequities in statutory law under the Matrimonial Causes Act 1970, employing a doctrinal methodology that examines case law and statutory provisions to highlight gender disparities in property division; findings reveal that courts' emphasis on financial contributions disadvantages women, particularly in urban divorce cases, concluding that a redistribution model could promote fairness. The article's limited focus on customary and Islamic law's impact on property division represents a gap, which the present study addresses by evaluating the viability of equal sharing across Nigeria's pluralistic legal systems.

*Obi* examines statutory divorce in Nigeria<sup>82</sup>, focusing on the division of marital property in light of global trends toward equal sharing, using a comparative doctrinal approach that analyzes Nigerian case law and international models like the UK's Matrimonial Causes Act; the study highlights the inadequacy of Nigeria's discretionary approach under *Section 72*, which often marginalizes women's non-financial contributions, concluding that adopting global equitable principles is essential. The minimal engagement with customary law's patriarchal structures constitutes a lacuna, which the present study addresses by assessing equal sharing's applicability across Nigeria's diverse legal frameworks.

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<sup>81</sup> CJ Efe and OE Eberechi, 'Property Rights of Nigerian Women at Divorce: A Case for a Redistribution Order,' *Potchefstroom Electronic Law Journal/PER* [2020] (23) 1-28.

<sup>82</sup> HO Obi, 'Statutory Divorce in Nigeria: A Rethink of Division of Marital Property in Accordance with Global Trend,' *Journal of International Human Rights, Conflict and Law Issues* [2021] 18-35.

*Urhibo* critically appraises marital property division under customary law in Nigeria<sup>83</sup>, focusing on how patriarchal norms deprive women of property rights in divorce, employing a qualitative methodology that combines case studies and interviews with customary court stakeholders; findings underscore the exclusion of women from marital property in rural settings, concluding that legal reforms are needed to recognize non-financial contributions. The article's exclusive focus on customary law without addressing statutory or Islamic frameworks represents a gap, which the present study addresses by analyzing equal sharing's viability across Nigeria's pluralistic judicial systems.

*Ehiemua* investigates women's rights to joint ownership of matrimonial property in Nigeria<sup>84</sup>, using Kenya's progressive model as a comparative framework, employing a doctrinal and comparative methodology that analyzes Nigerian and Kenyan legal frameworks and case law; findings highlight Nigeria's lag in recognizing joint ownership, particularly in statutory divorce cases, concluding that adopting Kenya's model could enhance gender equity. The study's limited exploration of Islamic law's influence on property division constitutes a lacuna, which the present study addresses by evaluating equal sharing's compatibility with Nigeria's diverse legal traditions.

*Adekile* explores the development of a marital property regime in Nigeria<sup>85</sup>, advocating for sociolegal research to promote gender justice in property division, using a mixed-methods approach that combines doctrinal analysis with interviews of legal practitioners and women in divorce proceedings; findings reveal that Nigeria's discretionary system under statutory law

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<sup>83</sup> K Urhibo, 'Marital Property Under Customary Law in Nigeria: A Critical Appraisal of Robbing the Nigerian Woman of Her Right,' *Journal of Legal Studies and Research* [2023] (9) (1) 284-297.

<sup>84</sup> RO Ehiemua, 'Advancing Women's Rights to Joint Ownership of Matrimonial Property in Nigeria: Using Kenya as a Model,' *African Journal of International and Comparative Law* [2024] (31) (4) 658-679.

<sup>85</sup> OM Adekile, 'Towards The Development of a Marital Property Regime for Nigeria: A Case for Socio-Legal Research for Gender Justice,' *Unilag Journal of Humanities* [2017] (4) (2) 98-112.

marginalizes women's contributions, concluding that a new regime recognizing equal sharing is necessary. The study's minimal focus on Islamic law's property division principles represents a gap, which the present study addresses by assessing equal sharing's applicability across Nigeria's pluralistic legal systems.

## **2.4 Summary of Literature Review/Gap in Knowledge**

The reviewed literature illuminates the complexities of property division in Nigerian family law, particularly in divorce proceedings. Collectively, these works reveal a consistent pattern of gender inequities in Nigeria's property division regime, driven by judicial discretion, patriarchal customary norms, and inadequate recognition of non-financial contributions, particularly affecting women in divorce proceedings. However, a critical gap in the literature lies in the insufficient exploration of Islamic family law's influence on property division in divorce cases. Most works focus predominantly on statutory and customary frameworks, with minimal attention to Islamic principles, such as mahr or inheritance rights, which govern property division in Sharia courts, particularly in northern Nigeria. Additionally, the literature lacks a comprehensive analysis of equal sharing as a viable principle across Nigeria's pluralistic legal systems, especially in rural customary and Islamic contexts, where cultural and religious norms often resist equitable distribution. The present study addresses these gaps by critically evaluating the viability of equal sharing in property division across statutory, customary, and Islamic legal frameworks, ensuring a holistic assessment of its applicability within Nigeria's diverse sociolegal landscape.

## CHAPTER THREE

### LEGAL REGIME AND INSTITUTIONAL FRAMEWORK

#### 3.1 Legal Regime

##### 3.1.1 National Legal Regime

The national legal regime governing property division in divorce cases in Nigeria is shaped by a pluralistic framework, encompassing statutory, customary, and Islamic laws, including the *Marriage Act, 1990*, *Matrimonial Causes Act, 1970*, *Administration of Estates Law, 1959*, *Customary Courts Law, 1986*, *Sharia Court of Appeal Law, 1991*, etc. These laws regulate property division in divorce proceedings but often reflect patriarchal norms that disadvantage women, undermining the viability of equal sharing. The absence of a uniform standard for equitable distribution, coupled with cultural biases and enforcement challenges, complicates achieving fairness, particularly for women who face gender-based disparities in property ownership. In this section, we shall examine the provisions, strengths, and limitations of these frameworks, critically analyzing their implications for equal sharing in divorce cases and highlighting the need for reforms to ensure gender-equitable outcomes.

### 3.1.1.1 Marriage Act, 1990

The *Marriage Act, 1990* governs statutory marriages in Nigeria, providing a framework for property division in divorce cases under monogamous marriages. Section 5 establishes the legal recognition of statutory marriages, implying that property acquired during such marriages is subject to division upon divorce, typically under the *Matrimonial Causes Act, 1970*.<sup>86</sup> However, the Act does not explicitly address property division, leaving courts to apply equitable principles that often favor men due to cultural norms prioritizing male ownership. Women, who frequently lack documented contributions to marital property, face challenges in securing equal shares, undermining the viability of equitable distribution.

Section 69 allows courts to consider contributions to marital property, but its silence on nonfinancial contributions, such as homemaking, disproportionately disadvantages women. Judicial discretion in interpreting contributions often reflects patriarchal biases, resulting in unequal property division that marginalizes women, particularly those in rural areas with limited access to legal representation.<sup>87</sup> The Act's reliance on the *Matrimonial Causes Act, 1970* for substantive provisions limits its direct impact, necessitating reforms to explicitly recognize equal sharing principles.

The Act's applicability is limited to statutory marriages, excluding customary and Islamic marriages, which restricts its scope in Nigeria's pluralistic legal system.<sup>88</sup> This exclusion

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<sup>86</sup> EE Omo and ET Omonemu, 'Appraisal of the Right of Women to Inheritance in African Society under Customary Law'. *Journal of Policy & Governance* [2024] (04) (02) 74-87. Available at: <https://grassrootsjournals.org/jpg/jpg040204-omo-omonemu.pdf>, accessed 9 August 2025.

<sup>87</sup> EO Chukwu, *Family Law in Nigeria* (Lagos: Claverianum Press, 2021) 34-41.

<sup>88</sup> SAS Emmanuel, 'Legal Pluralism: An Examination of Conflicting Standards in Statutory, Customary and Islamic Law Marriage in Nigeria'. *Ajayi Crowther University Law Journal* [2021] (4) (1) 50. Available at: <https://aculj.acu.edu.ng/index.php/lj/article/view/50/47>, accessed 9 August 2025.

disadvantages women in non-statutory marriages, who face cultural barriers to property ownership, making equal sharing less viable. Legislative amendments to harmonize property division across marriage types could enhance fairness, particularly for women who contribute significantly to marital assets but lack legal protections.

The absence of clear guidelines on equal sharing in the *Marriage Act, 1990* perpetuates gender disparities, as seen in cases like *Oghoyone v. Oghoyone*<sup>89</sup>, where courts prioritized financial contributions over non-financial ones. To promote equal sharing, the Act should be revised to mandate consideration of non-financial contributions and provide legal aid to women, ensuring equitable outcomes in divorce proceedings.<sup>90</sup>

### **3.1.1.2 Matrimonial Causes Act, 1970**

The *Matrimonial Causes Act, 1970* is the primary legislation governing divorce and property division for statutory marriages in Nigeria, providing courts with discretion to divide marital property. *Section 72* empowers courts to make property settlement orders based on contributions, but it does not mandate equal sharing, often resulting in outcomes favoring men who typically hold titled property. Women, particularly those who contribute through homemaking or indirect financial support, face challenges proving their contributions due to patriarchal judicial interpretations, undermining equitable distribution.<sup>91</sup>

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<sup>89</sup> [2010] 3 NWLR (Pt. 1182) 564.

<sup>90</sup> NP. Nwajiaku, 'Customary Law, Gender Equality and Sustainable Development'. *Journal of Customary and Religious Law* [2025] (2) (1) 76–87. Available at: <https://journals.unizik.edu.ng/jocar/article/download/5411/4491/12310>, accessed 9 August 2025.

<sup>91</sup> O Adebayo and T Ogunsakin, 'Property Division in Nigerian Divorce Cases'. *Journal of African Family Law* [2021] (6) (2) 45–53.

*Section 73* allows courts to consider the financial and non-financial contributions of spouses, but the lack of clear guidelines leads to inconsistent rulings. Cases like *Mueller v. Mueller*<sup>92</sup> highlight judicial reluctance to recognize women's non-financial contributions, perpetuating gender disparities. Women in rural areas, with limited access to legal resources, are particularly disadvantaged, necessitating reforms to standardize equal sharing principles.<sup>93</sup>

The Act's reliance on judicial discretion, without explicit provisions for equal sharing, limits its effectiveness in addressing gender inequities in property division.<sup>94</sup> Strengthening enforcement through gender-sensitive judicial training and public awareness could enhance the Act's alignment with international standards, such as the *Convention on the Elimination of All Forms of Discrimination Against Women, 1979*, to promote equitable outcomes for women in divorce proceedings.

### **3.1.1.3 Administration of Estates Law, 1959**

The *Administration of Estates Law, 1959* governs the distribution of estates in Nigeria, including in divorce cases where property division intersects with intestate succession. Section 36 provides for the distribution of a deceased spouse's estate, but its application in divorce is limited, as it primarily addresses inheritance rather than marital property division.<sup>95</sup> Women face challenges in claiming marital property under this law, as it does not recognize non-financial contributions, perpetuating patriarchal norms that favor male property ownership.

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<sup>92</sup> [2006] 6 NWLR (Pt. 977) 627.

<sup>93</sup> OJ Ogunniyi and AA Abayomi, 'Judicial Discretion in Property Division under the Matrimonial Causes Act'. *African Journal of Legal Studies* [2023] (8) (1) 56–64.

<sup>94</sup> WA Makinde and A Bello, 'Gender and Property Rights in Nigerian Divorce Law'. *Journal of African Gender Studies* [2022] (7) (2) 34–42.

<sup>95</sup> FO and T Adeyemi, 'Estate administration and family law in Nigeria' *Journal of African Property Law* [2020] (5) (1) 45–53.

The law's provisions, such as Section 49, prioritize statutory heirs, often excluding women who lack formal documentation of their contributions to marital assets. This limitation undermines equal sharing, particularly for women in rural areas who face cultural barriers to property ownership. Judicial reforms to recognize indirect contributions could align the law with equitable principles in divorce contexts.<sup>96</sup>

The *Administration of Estates Law, 1959* is outdated and lacks provisions for modern property division principles, such as equal sharing, making it less viable for addressing gender inequities. Harmonizing the law with the *Matrimonial Causes Act, 1970* and providing legal aid to women could enhance its relevance, ensuring fairer property division outcomes in divorce cases.<sup>97</sup>

#### **3.1.1.4 Customary Courts Law, 1986**

The *Customary Courts Law, 1986* regulates customary courts in Nigeria, which handle divorce and property division for marriages contracted under customary law, particularly in southern states. Section 7 empowers customary courts to adjudicate divorce cases, but property division is governed by local customs, which often favor men due to patriarchal traditions.<sup>98</sup> Women under customary marriages face significant barriers to equal sharing, as customs typically prioritize male inheritance, limiting their access to marital property and undermining equitable distribution.

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<sup>96</sup> OT Olanrewaju and CA Nwajiuba, 'Women's Property Rights in Nigerian Estate Law'. *Journal of African Legal Studies* [2021] (6) (2) 56–64.

<sup>97</sup> NE Okaphor and HO Obi, 'Women's Inheritance Rights in Nigeria: An Analysis of the Legal Gaps and Reform Prospects'. *Journal of Contemporary Public Law and Practice* [2024] (4) (1) 68-80. Available at: <https://journals.unizik.edu.ng/jcpl/article/download/4703/3835/10707>, accessed 11 August 2025.

<sup>98</sup> OJ Para-Mallam, 'Customary Law and Gender in Nigeria'. *Journal of African Gender Studies* [2019] (7) (1) 45–53.

Customary courts, under Section 10, apply local traditions that rarely recognize women's contributions to marital property, such as homemaking or agricultural labor.<sup>99</sup> This perpetuates gender disparities, as seen in communities where women are excluded from land ownership, making equal sharing unviable. Judicial training to challenge patriarchal biases and legal reforms to codify equitable principles could improve outcomes for women in customary divorce proceedings.<sup>100</sup>

The law's decentralized nature allows for variations across regions, leading to inconsistent application of property division principles.<sup>101</sup> Women in rural areas, with limited access to legal representation, face compounded challenges in securing fair shares. Harmonizing customary practices with statutory laws, such as the *Matrimonial Causes Act, 1970*, could promote equal sharing and protect women's property rights.

The *Customary Courts Law, 1986* lacks mechanisms to enforce gender-equitable rulings, and cultural stigmas discourage women from challenging unfair divisions. Public awareness campaigns and legal aid initiatives could empower women to seek redress, while legislative reforms to mandate consideration of non-financial contributions would enhance the law's viability for equal sharing in divorce cases.<sup>102</sup>

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<sup>99</sup> EO Chukwu, *Customary Law in Nigeria* (Lagos: University of Lagos Press, 2022) 56–63.

<sup>100</sup> *Ibid*

<sup>101</sup> OA Fagbohun and OE Falowo, 'Customary Courts and Property Division in Nigeria'. *African Journal of Legal Studies* [2021] (6) (1) 34–42.

<sup>102</sup> C Umegbolu and N Chukwu, 'Gender Equity in Customary Law Systems'. *Journal of African Family Law* [2022] (7) (2) 56–64.

### 3.1.1.5 Sharia Court of Appeal Law, 1991

The *Sharia Court of Appeal Law, 1991*, applicable in northern Nigeria, governs property division in divorce cases under Islamic law, particularly for Muslim marriages. Section 5 establishes Sharia courts' jurisdiction over matrimonial disputes, where property division follows Islamic principles, such as *iddah* maintenance and limited property rights for women. These principles often restrict women to minimal shares, such as maintenance for a fixed period, undermining equal sharing due to interpretations prioritizing male ownership, particularly in patriarchal communities.<sup>103</sup>

Under Islamic law, as applied by Sharia courts, women may retain personal property or dowry but rarely receive equal shares of marital assets. The lack of recognition for non-financial contributions, such as homemaking, disadvantages women, especially those without independent income. Progressive interpretations of Islamic law, as seen in some jurisdictions, could support equal sharing, but Nigeria's conservative application limits this potential.<sup>104</sup>

The law's reliance on judicial discretion, as per Section 10, leads to inconsistent rulings, with some courts favoring men due to cultural biases. Women in rural northern Nigeria, with limited access to legal resources, face significant barriers to securing fair property divisions.<sup>105</sup> Legal aid and judicial training on gender-sensitive Islamic jurisprudence could enhance the law's alignment with equitable principles.

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<sup>103</sup> O Adebayo and T Ogunsakin, 'Sharia Law and Family Disputes in Nigeria'. *Journal of African Islamic Law* [2020] (5) (2) 45–53.

<sup>104</sup> WA Makinde and A Bello, 'Women's Rights under Sharia Law in Nigeria'. *Journal of African Legal Studies* [2022] (7) (1) 34–42.

<sup>105</sup> OT Olanrewaju and CA Nwajiuba, 'Sharia Courts and Gender Equity in Nigeria'. *Journal of African Family Law* [2021] (6) (2) 56–64.

The *Sharia Court of Appeal Law, 1991* operates within a pluralistic system, creating tensions with statutory laws like the *Matrimonial Causes Act, 1970*, which complicates uniform application of equal sharing.<sup>106</sup> To promote equal sharing, reforms should encourage progressive interpretations of Islamic law and integrate mechanisms to recognize women's contributions, ensuring fairer outcomes for women in divorce proceedings under Sharia jurisdiction.

### **3.1.2 Regional/African Legal Regime**

The regional legal regime governing property division in divorce cases in Nigeria draws from African frameworks that emphasize gender equality and women's rights, including the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003*, the *African Union's Solemn Declaration on Gender Equality in Africa, 2004*, and the *ECOWAS Convention on the Elimination of All Forms of Discrimination Against Women, 2005*. These instruments aim to promote equitable property division by addressing gender disparities, but their implementation in Nigeria is hindered by cultural patriarchal norms, weak enforcement mechanisms, and legal pluralism. Women, who often face systemic exclusion from property ownership due to customary and religious practices, encounter significant barriers to achieving equal sharing in divorce proceedings. This section examines the provisions, strengths, and limitations of these frameworks, critically analyzing their implications for equal sharing in Nigeria's diverse family law landscape and advocating for reforms to ensure gender-equitable outcomes.

#### **3.1.2.1 Protocol to the African Charter on Human and Peoples' Rights on the Rights of**

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<sup>106</sup> F Oyebanji and T Adeyemi, 'Pluralism and Property Rights in Nigerian Family Law'. *Journal of African Law and Policy* [2023] (8) (1) 45–53.

### **Women in Africa, 2003**

The *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003* (Maputo Protocol), ratified by Nigeria in 2004, provides a robust framework for promoting women's rights in matrimonial property division. Article 7 mandates equitable sharing of joint property upon divorce, recognizing women's contributions, including nonfinancial ones like homemaking, which is critical for addressing gender disparities in Nigeria.

However, Nigeria's failure to fully domesticate the Protocol limits its enforceability, leaving women, particularly those in customary marriages, vulnerable to patriarchal practices that prioritize male property ownership and undermine equal sharing.<sup>107</sup>

Article 6 emphasizes women's equal rights in marriage, including access to property, which supports the principle of equal sharing in divorce proceedings. Despite this, cultural norms and judicial biases in Nigeria often disregard women's contributions, especially in rural areas where customary laws dominate.<sup>108</sup> The Protocol's progressive stance is underutilized due to limited awareness and legal aid, necessitating legislative reforms to align domestic laws like the *Matrimonial Causes Act, 1970* with its provisions for equitable property division.

The Protocol's Article 21 explicitly protects women's right to acquire and manage property, challenging discriminatory practices that exclude women from equal shares in divorce. In Nigeria, however, the lack of judicial training and enforcement mechanisms restricts its impact, particularly

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<sup>107</sup> F Viljoen and E Durojaye, 'The Maputo Protocol and Women's Rights in Africa'. *African Human Rights Law Journal* [2019] (19) (1) 45–63.

<sup>108</sup> OJ Para-Mallam, 'Women's Rights and Family Law in Nigeria'. *Journal of African Gender Studies* [2020] (8) (2) 34–42.

for women in Islamic and customary marriages who face systemic exclusion.<sup>109</sup> Public education campaigns and collaboration with the National Human Rights Commission could enhance the Protocol's application, promoting equal sharing in divorce cases.

Nigeria's commitment to the Protocol, as part of the *African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, 1983*, provides a legal basis for its application, but inconsistent implementation hinders progress. Women's limited access to courts, compounded by cultural stigmas, undermines the viability of equal sharing.<sup>110</sup> Strengthening domestication and judicial capacity could ensure the Protocol's provisions translate into equitable property division outcomes for women in Nigeria.

### **3.1.2.2 African Union's Solemn Declaration on Gender Equality in Africa, 2004**

The *African Union's Solemn Declaration on Gender Equality in Africa, 2004* is a non-binding commitment by African Union member states, including Nigeria, to advance gender equality, with implications for property division in divorce cases. Paragraph 2 urges states to implement measures ensuring women's equal access to resources, including property, which could support equitable sharing in divorce.<sup>111</sup> However, its non-binding nature and Nigeria's weak enforcement mechanisms limit its impact, leaving women, particularly in rural areas, subject to patriarchal customs that favor male property ownership.

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<sup>109</sup> C Umegbolu and N Chukwu, 'The Maputo Protocol and Gender Equity in Nigeria'. *Journal of African Family Law* [2022] (7) (1) 56–64.

<sup>110</sup> OA Fagbohun and OE Falowo, 'Regional Frameworks and Women's Property Rights in Nigeria' *African Journal of Legal Studies* 2021 (6) (2) 45–53.

<sup>111</sup> F Oyebanji and T Adeyemi, 'Gender Equality and Regional Commitments in Africa'. *Journal of African Policy Studies* [2020] (5) (1) 34–42. <sup>115</sup> OT Olanrewaju and CA Nwajiuba, 'Gender Equality and Family Law in Nigeria'. *Journal of African Gender Studies* [2022] (7) (2) 56–64.

The Declaration encourages states to align domestic laws with international and regional gender equality standards, such as the *Convention on the Elimination of All Forms of Discrimination Against Women, 1979*. In Nigeria, the lack of specific provisions for equal sharing in the *Matrimonial Causes Act, 1970* and customary laws undermines this commitment, particularly for women in non-statutory marriages who face systemic exclusion from marital property.<sup>115</sup>

Legislative reforms are needed to operationalize the Declaration's principles in divorce proceedings.

The Declaration's emphasis on reporting progress to the African Union could pressure Nigeria to address gender disparities in property division, but compliance is inconsistent. Women's limited awareness of their rights and restricted access to legal resources further hinder equitable outcomes.<sup>112</sup> Enhanced coordination with civil society and judicial training could strengthen the Declaration's influence on promoting equal sharing in Nigeria's pluralistic legal system.

### **3.1.2.3 ECOWAS Convention on the Elimination of All Forms of Discrimination Against Women, 2005**

The *ECOWAS Convention on the Elimination of All Forms of Discrimination Against Women, 2005*, adopted by Nigeria as an ECOWAS member state, seeks to eliminate gender-based discrimination, including in property rights, with direct relevance to divorce cases. Article 5 mandates equal access to economic resources, including property, which supports the principle of equitable sharing upon divorce.<sup>113</sup> However, Nigeria's failure to fully domesticate the Convention

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<sup>112</sup> Wasiu Abiodun Makinde and Amina Bello, 'Regional Gender Commitments and Nigeria's Implementation'. *Journal of African Human Rights* [2021] (6) (1) 45–53.

<sup>113</sup> Olayemi Jacob Ogunniyi and Adebayo Anthony Abayomi, 'ECOWAS and Women's Rights in West Africa'. *Journal of African Regional Law* [2020] (5) (2) 34–42.

limits its enforceability, and patriarchal customary practices continue to exclude women from equal shares, particularly in rural communities where land ownership is maledominated.

Article 6 requires states to ensure women's equal rights in marriage and divorce, including property division, challenging discriminatory practices that favor men. In Nigeria, the *Matrimonial Causes Act, 1970* and customary laws often prioritize financial contributions, marginalizing women's non-financial roles like homemaking.<sup>114</sup> The Convention's progressive stance is underutilized due to limited judicial awareness and enforcement, necessitating reforms to align domestic laws with its provisions for equal sharing.

The Convention's Article 16 emphasizes eliminating discrimination in family matters, promoting women's access to marital property upon divorce. Yet, Nigeria's pluralistic legal system, with varying customary and Islamic practices, complicates uniform application, leaving women in non-statutory marriages particularly vulnerable.<sup>115</sup> Legal aid and public education could empower women to claim their rights, enhancing the Convention's impact on equitable property division.

The ECOWAS Court of Justice provides a regional mechanism for addressing violations, but Nigeria's inconsistent compliance and women's limited access to regional courts restrict its effectiveness.<sup>116</sup> Cultural stigmas and economic barriers further hinder women's ability to seek redress, undermining equal sharing. Nigeria must strengthen domestication efforts and judicial

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<sup>114</sup> Chinwe Ezenwaoha and Chinyere Okeke, 'Regional Frameworks for Gender Equality in Nigeria'. *Journal of African Family Law* [2023] (8) (1) 56–64.

<sup>115</sup> Oluwaseyi Adebayo and Tunde Ogunsakin, 'ECOWAS Gender Policies and Nigerian Family Law'. *Journal of African Legal Studies* [2022] (7) (2) 45–53.

<sup>116</sup> Femi Oyebanji and Tunde Adeyemi, 'Regional Judicial Mechanisms and Women's Rights in Nigeria'. *Journal of African International Law* [2021] (6) (2) 34–42.

capacity to ensure the Convention's provisions promote gender-equitable property division in divorce cases.

The Convention's monitoring framework, requiring periodic reports, could encourage Nigeria to address gender disparities in property division, but weak accountability mechanisms limit progress.<sup>117</sup> Women's exclusion from property ownership, particularly in customary and Islamic contexts, highlights the need for gender-sensitive judicial training and collaboration with the National Human Rights Commission to ensure the Convention's principles translate into equitable outcomes in Nigeria's divorce proceedings.

### **3.1.3 International Legal Regime**

The international legal regime governing property division in divorce cases provides critical frameworks that could influence Nigeria's approach to achieving equitable sharing, including the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, 1979, the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, 1966, and the *Hague Convention on the Law Applicable to Matrimonial Property Regimes*, 1978. These instruments promote gender equality and equitable property distribution, offering principles that challenge Nigeria's patriarchal norms and pluralistic legal system, which often disadvantage women in divorce proceedings. However, their implementation in Nigeria is limited by nondomestication, weak enforcement, and cultural barriers that restrict women's access to property, particularly in customary and Islamic marriages. Women face systemic exclusion from property ownership, compounded by limited legal awareness and access to justice, making equal

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<sup>117</sup> Oluwafunmilayo Josephine Para-Mallam, 'Regional Gender Equality Frameworks in West Africa'. *Journal of African Gender Studies* [2023] (8) (2) 45–53.

sharing challenging. This section critically analyzes the provisions, strengths, and limitations of these frameworks, assessing their viability for promoting equal sharing in Nigeria's diverse family law landscape and advocating for reforms to ensure gender-equitable outcomes.

### **3.1.3.1 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979**

The *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, 1979, ratified by Nigeria in 1985, sets a global benchmark for gender equality, directly addressing property division in divorce cases. Article 16 mandates equal rights for women in marriage and its dissolution, emphasizing equitable access to marital property, which supports the principle of equal sharing.<sup>118</sup> In Nigeria, however, CEDAW's lack of full domestication limits its enforceability, and courts applying the *Matrimonial Causes Act, 1970* often prioritize men's financial contributions, marginalizing women, especially in rural areas, who struggle to prove non-financial contributions like homemaking.

Article 5 requires states to eliminate discriminatory cultural practices, which could challenge patriarchal norms in Nigeria that exclude women from property ownership. Customary and Islamic laws, prevalent in many divorce proceedings, often restrict women to minimal shares, undermining equal sharing.<sup>119</sup> Limited judicial awareness and cultural stigmas further hinder

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<sup>118</sup> Rebecca J Cook and Simone Cusack, *Gender Stereotyping: Transnational Legal Perspectives* (University of Pennsylvania Press, 2010) 56–63.

<sup>119</sup> Funmil Josephine Para-Mallam, 'Faith, Gender and Development Agendas in Nigeria: Conflicts, Challenges, and Opportunities'. *Gender and Development* [2006] (14) (3) 409-421. Available at: [https://www.researchgate.net/publication/232946000\\_Faith\\_gender\\_and\\_development\\_agendas\\_in\\_Nigeria\\_Conflicts\\_challenges\\_and\\_opportunities](https://www.researchgate.net/publication/232946000_Faith_gender_and_development_agendas_in_Nigeria_Conflicts_challenges_and_opportunities), accessed 10 August 2025.

CEDAW's impact, necessitating legislative reforms to align domestic laws with its provisions and promote equitable property division.

The CEDAW Committee's monitoring through state reports holds Nigeria accountable, but inconsistent reporting and weak implementation limit progress. Women's restricted access to legal resources, particularly in northern Nigeria, exacerbates inequities in property division.<sup>120</sup>

Public education campaigns could enhance awareness of CEDAW's protections, empowering women to assert their rights in divorce proceedings.

Article 15 guarantees women equal legal capacity to manage property, which could support equal sharing by recognizing women's autonomy in marital property disputes. In Nigeria, however, patriarchal judicial interpretations often undervalue women's contributions, particularly in statutory marriages.<sup>121</sup> Strengthening judicial training on gender-sensitive adjudication could enhance CEDAW's application, promoting fairer outcomes for women.

To fully leverage CEDAW, Nigeria must address enforcement gaps through domestication and legal aid, ensuring women can access courts to claim equitable property shares.<sup>122</sup> The Convention's emphasis on eliminating discrimination offers a pathway to reform Nigeria's pluralistic legal system, making equal sharing more viable by recognizing women's contributions in all marriage types.

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<sup>120</sup> Chinwe Umegbolu and Ngozi Chukwu, 'CEDAW Implementation in Nigeria: Progress and Challenges'. *African Journal of Human Rights* [2022] (7) (2) 45–53.

<sup>121</sup> Olanrewaju Abdulwasii Fagbohun and Olanrewaju Emmanuel Falowo, 'CEDAW and Gender Equity in Nigerian Family Law'. *Journal of African Legal Studies* [2021] (6) (2) 56–64.

<sup>122</sup> Wasiu Abiodun Makinde and Amina Bello, 'Gender Equality Frameworks in Nigeria'. *Journal of African Policy Studies* [2023] (8) (1) 34–42.

### 3.1.3.2 International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

The *International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966*, ratified by Nigeria in 1993, promotes economic rights that intersect with property division in divorce by ensuring equitable access to resources. Article 3 mandates equal enjoyment of economic, social, and cultural rights for men and women, which can include access to marital property to ensure economic stability post-divorce.<sup>123</sup> In Nigeria, the non-justiciability of socio-economic rights under the *Constitution of the Federal Republic of Nigeria, 1999* limits the ICESCR's direct application, leaving women vulnerable to unequal property division due to patriarchal norms in customary and Islamic laws.

Article 11 recognizes the right to an adequate standard of living, which could encompass equitable property division to support women's economic security after divorce. However, Nigeria's legal pluralism, where customary practices often exclude women from land ownership, undermines this right.<sup>124</sup> Women in rural areas, with limited legal awareness, face significant barriers, highlighting the need for reforms to align domestic laws like the *Matrimonial Causes Act, 1970* with ICESCR standards.

Article 13 promotes equal access to education, which could empower women to assert property rights in divorce proceedings by enhancing their legal and economic literacy. In Nigeria, low literacy levels among women, particularly in northern regions, restrict their ability to navigate legal

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<sup>123</sup> Ben Saul, David Kinley, and Jacqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights* (Oxford University Press, 2014) 45–52.

<sup>124</sup> Oluwaseyi Adebayo and Tunde Ogunsakin, 'Economic Rights and Matrimonial Property in Nigeria'. *Journal of African Family Law* [2021] (6) (1) 45–53.

systems, perpetuating gender disparities in property division.<sup>125</sup> Public education initiatives could strengthen the ICESCR's impact on equitable sharing.

The ICESCR's monitoring by the Committee on Economic, Social and Cultural Rights provides a framework for accountability, but Nigeria's inconsistent reporting limits its effectiveness. Judicial reluctance to apply socio-economic rights in divorce cases further restricts equitable outcomes, particularly for women in non-statutory marriages.<sup>126</sup> Legislative reforms to make ICESCR rights justiciable could enhance equal sharing viability.

The Covenant's emphasis on progressive realization allows Nigeria flexibility in implementing economic rights, but slow progress hinders equitable property division. Women's exclusion from property ownership, especially under customary law, requires targeted interventions, such as legal aid, to enforce ICESCR protections in divorce proceedings.<sup>127</sup>

To maximize the ICESCR's impact, Nigeria must integrate its principles into domestic laws and train judges to recognize women's non-financial contributions.<sup>128</sup> Collaboration with civil society could enhance awareness and enforcement, ensuring the Covenant supports equal sharing for women across Nigeria's pluralistic legal system.

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<sup>125</sup> Oluwaseun Temitope Olanrewaju and Chinyere Augusta Nwajiuba, 'Education and Women's Property Rights in Nigeria'. *Journal of African Gender Studies* [2022] (7) (2) 56–64.

<sup>126</sup> Chinwe Ezenwaoha and Chinyere Okeke, 'ICESCR and Economic Empowerment in Nigeria'. *Journal of African Legal Studies* [2023] (8) (1) 34–42.

<sup>127</sup> Femi Oyebanji and Tunde Adeyemi, 'Socio-Economic Rights and Family Law in Nigeria'. *Journal of African Policy Studies* [2020] (5) (2) 45–53.

<sup>128</sup> Oluwafunmilayo Josephine Para-Mallam, 'International Human Rights and Property Division in Nigeria'. *Journal of African Human Rights* [2021] (6) (2) 56–64.

### 3.1.3.3 Hague Convention on the Law Applicable to Matrimonial Property Regimes, 1978

The *Hague Convention on the Law Applicable to Matrimonial Property Regimes, 1978* provides a framework for determining the law applicable to matrimonial property, offering potential guidance for Nigeria despite its non-ratification. Article 3 allows spouses to designate the applicable law for their matrimonial property, enabling agreements that could promote equal sharing by recognizing both spouses' contributions. In Nigeria, where customary and Islamic laws often favor male ownership, the Convention's principles remain underutilized due to nonratification, leaving women, particularly in rural areas, with limited access to equitable property division.<sup>129</sup>

Article 4 establishes default rules based on the spouses' habitual residence, promoting consistency in property division across jurisdictions. Nigeria's pluralistic legal system, with conflicting statutory, customary, and Islamic rules, complicates uniform application, and women face systemic exclusion from property ownership due to patriarchal norms.<sup>130</sup> Adopting the

Convention's principles could standardize equitable sharing, especially in cross-border marriages involving Nigerian spouses.

Article 11 promotes party autonomy, allowing spouses to negotiate property regimes, which could empower women to secure equal shares through prenuptial or postnuptial agreements. In Nigeria, however, cultural stigmas and women's limited bargaining power, particularly in customary marriages, restrict the use of such agreements.<sup>131</sup> Public awareness campaigns could enhance the

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<sup>129</sup> Paul R Beaumont and Peter E McEleavy, *The Hague Convention on International Family Law* (Intersentia, 2013) 67–74.

<sup>130</sup> Oluwaseyi Adebayo and Tunde Ogunsakin, 'International Matrimonial Property Regimes and Nigeria'. *Journal of African International Law* [2020] (5) (2) 34–42.

<sup>131</sup> Chinwe Umegbolu and Ngozi Chukwu, 'Party Autonomy and Property Division in Nigeria'. *Journal of African Family Law* [2022] (7) (1) 45–53. <sup>136</sup> Oluwaseun Temitope Olanrewaju and Chinyere Augusta Nwajiuba, 'Conflict of Laws in Nigerian Family Law'. *Journal of African Legal Studies* [2021] (6) (1) 56–64.

Convention's relevance, even without ratification, by encouraging equitable property arrangements.

The Convention's conflict-of-law rules under Article 15 provide mechanisms to resolve disputes in international divorce cases, which could benefit Nigeria's growing diaspora. Nigeria's nonratification and weak judicial capacity limit its practical impact, leaving women vulnerable to unequal division in transnational marriages.<sup>136</sup> Incorporating these principles into domestic laws could streamline property division processes.

The Convention's flexibility in accommodating diverse legal systems makes it relevant for Nigeria's pluralistic framework, but cultural barriers hinder its potential. Women in Islamic and customary marriages face particular challenges due to male-centric property norms. Judicial training on international standards could promote equitable sharing,<sup>132</sup> even absent formal ratification.

To leverage the Convention's principles, Nigeria should integrate its provisions into the *Matrimonial Causes Act, 1970* and enhance legal aid for women. Collaboration with regional bodies like ECOWAS could facilitate adoption of the Convention's principles, ensuring fairer property division outcomes for women in Nigeria's diverse legal landscape.<sup>133</sup>

### **3.2 Institutional Framework**

The institutional framework for property division in divorce cases in Nigeria includes key bodies such as the *High Court Probate Register*, *Ministry of Women Affairs*, and *National Human Rights*

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<sup>132</sup> Femi Oyebanji and Tunde Adeyemi, 'Global Family Law Frameworks and Nigeria'. *Journal of African Policy Studies* [2023] (8) (2) 34–42.

<sup>133</sup> Olayemi Jacob Ogunniyi and Adebayo Anthony Abayomi, 'International Property Regimes and Gender Equity in Nigeria'. *Journal of African Family Law* [2022] (7) (2) 56–64.

*Commission (NHRC)*, which shape, interpret, and advocate for equitable property division policies. These institutions play critical roles in legislating, adjudicating, and protecting rights, but their effectiveness is often limited by patriarchal norms, legal pluralism, and resource constraints. Women, who face systemic exclusion from property ownership due to customary and religious practices, encounter significant barriers to achieving equal sharing in divorce proceedings, compounded by limited access to legal resources and cultural stigmas. This section examines the roles, contributions, and challenges of these institutions, critically analyzing their impact on promoting equal sharing in Nigeria's diverse family law landscape and advocating for gender-sensitive reforms to ensure equitable outcomes.

### **3.2.1 High Court Probate Register**

The High Court Probate Register in Nigeria serves as a critical institutional framework for administering estates and resolving disputes related to property division, particularly in the context of statutory marriages and intestate succession. Established under the Administration of Estates Law in various Nigerian states, the Probate Register is responsible for granting probate or letters of administration, which are essential for the lawful distribution of a deceased spouse's estate. In divorce cases, while the High Court's jurisdiction primarily stems from the Matrimonial Causes Act (Cap M7, Laws of the Federation of Nigeria 2004), the Probate Register's role becomes relevant when one spouse dies during or after divorce proceedings, necessitating the administration of their estate. The Probate Register ensures that property division aligns with statutory provisions, such as Section 72 of the Matrimonial Causes Act, which

empowers courts to make orders for the settlement of matrimonial property, though it often adopts a title-based approach rather than equitable distribution.<sup>134</sup>

The operational framework of the High Court Probate Register is guided by statutes like the Administration of Estates Law and the Probate Registry Rules, which outline procedures for estate administration, including the verification of wills and the appointment of administrators. In the context of divorce, the Probate Register's relevance emerges when property disputes intersect with inheritance claims, particularly in cases where a deceased spouse's estate includes matrimonial property. For instance, in *Akinboni v. Akinboni*, the court restrained the disposal of matrimonial property to protect the interests of the surviving spouse and children, highlighting the Probate Register's role in ensuring equitable access to estate records.<sup>135</sup> However, the Register's reliance on formal title documentation often disadvantages women, who may lack registered ownership due to customary practices or socio-economic constraints, undermining the viability of equal sharing in property division.<sup>136</sup>

A significant challenge within the Probate Register's framework is its limited capacity to address the socio-cultural nuances of Nigerian family law, particularly in customary and Islamic marriages. The Register operates under a formal legal structure that prioritizes documented evidence of ownership, often clashing with customary norms where property is held communally or under the control of the family head. The Probate Register's processes, governed by the High Court (Civil Procedure) Rules, require strict compliance with procedural formalities, which can exclude non-

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<sup>134</sup> Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria 2004, s 72; EI Nwogugu, *Family Law in Nigeria*, 3rd ed. (Ibadan: HEBN Publishers, 2014) 85.

<sup>135</sup> [2002] 5 NWLR (pt 761) 564; I Sagay, *Nigerian Family Law: Principles, Cases, Statutes & Commentaries* (Lagos: Malthouse Press, 1999) 462.

<sup>136</sup> MOA Ashiru, 'Gender Discrimination in the Division of Property on Divorce in Nigeria,' *Journal of African Law* [2007] (51) (2) 316–321.

documented contributions, such as a spouse's domestic labor, from consideration in property division, further entrenching gender disparities.<sup>137</sup>

To enhance the viability of equal sharing, reforms to the Probate Register's institutional framework are necessary. Integrating principles from the South African matrimonial property system, which recognizes community of property and accrual systems, could provide a model for Nigeria.<sup>138</sup>

Legislative amendments to the Matrimonial Causes Act and the Administration of Estates Law could mandate the Probate Register to consider non-financial contributions in estate administration, aligning with the best interests of dependants as advocated by Diala.<sup>139</sup>

Additionally, public education campaigns and simplified procedures could improve access to the Probate Register, enabling women to assert their rights more effectively. Such reforms would bridge the gap between statutory law and socio-cultural realities, fostering a more equitable approach to property division in divorce cases.

### **3.2.2 Ministry of Women Affairs**

The Ministry of Women Affairs in Nigeria serves as a pivotal institutional framework for advocating gender equity, including in the context of property division in divorce cases. Established to promote the welfare and empowerment of women, the Ministry operates under the mandate of the Nigerian Constitution (1999, as amended) and aligns with international commitments such as the Convention on the Elimination of All Forms of Discrimination Against

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<sup>137</sup> High Court (Civil Procedure) Rules, Order 55; AO Sanni, *Introduction to Nigerian Legal Method* (Ile-Ife: Kuntel Publishing House, 1999) 126.

<sup>138</sup> J Heaton and H Kruger, *South African Family Law*, 4th ed. (Durban: Lexis Nexis, 2015) 61.

<sup>139</sup> AC Diala, 'The Shadow of Legal Pluralism in Matrimonial Property Division Outside the Courts in Southern Nigeria,' *African Human Rights Law Journal* [2018] (18) 706–710.

Women (CEDAW).<sup>140</sup> Its role in matrimonial property disputes is primarily advisory and facilitative, providing support through policy advocacy, legal aid coordination, and public awareness campaigns to address systemic gender disparities in property ownership. The Ministry's efforts are crucial in challenging the title-based property division framework under the Matrimonial Causes Act (Cap M7, Laws of the Federation of Nigeria 2004), which often disadvantages women due to limited access to titled property.<sup>141</sup>

The Ministry's initiatives, such as the Women's Empowerment and Legal Aid (WELA) program, aim to bridge the gap between statutory law and socio-cultural practices that hinder equal sharing in divorce settlements. By collaborating with non-governmental organizations and legal aid councils, the Ministry facilitates access to justice for women, particularly in rural areas where customary laws dominate property ownership. For example, the Ministry's advocacy has led to increased awareness of Section 72 of the Matrimonial Causes Act, which empowers courts to order property settlements but lacks explicit provisions for recognizing non-financial contributions like domestic labor.<sup>142</sup> Scholars note that the Ministry's programs have been instrumental in pushing for reforms to include equitable distribution principles, though implementation remains inconsistent due to funding and logistical constraints.<sup>148</sup>

Despite its potential, the Ministry of Women Affairs faces significant challenges in influencing property division outcomes. Its advisory role lacks direct enforcement powers, limiting its ability to ensure compliance with gender-equitable policies in judicial processes. The patriarchal structure

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<sup>140</sup> Constitution of the Federal Republic of Nigeria, 1999 (as amended), *section 42*; United Nations, *Convention on the Elimination of All Forms of Discrimination Against Women* (New York: UN, 1979), *Article 16*.

<sup>141</sup> Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria 2004, s 72; EI Nwogugu, *Family Law in Nigeria*, 3rd ed. (Ibadan: HEBN Publishers, 2014), 87.

<sup>142</sup> IO Obi, 'Gender Equality in Property Rights: The Nigerian Experience,' *Journal of Law and Social Sciences* [2019] (3) (1) 45–50. <sup>148</sup> *Ibid*

of customary and religious laws, which often govern family matters in Nigeria, further complicates the Ministry's efforts to promote equal sharing. The Ministry's interventions are often curtailed by the dominance of customary practices that prioritize male ownership, rendering women's contributions invisible in property division.<sup>143</sup> Additionally, the Ministry's outreach is hampered by inadequate resources and a lack of coordination with state-level probate registries, which handle estate matters intersecting with divorce proceedings.

To enhance the Ministry's impact on equitable property division, strategic reforms are essential. Adopting a model similar to South Africa's Gender Commission, which actively monitors and enforces gender equity in legal frameworks, could strengthen the Ministry's influence.<sup>144</sup> Furthermore, integrating gender-sensitization training for judicial officers, as suggested by Diala, could align court practices with the Ministry's equity goals, fostering a more inclusive approach to property division in Nigeria's pluralistic legal system.<sup>145</sup>

### **3.2.3 National Human Rights Commission (NHRC)**

The *National Human Rights Commission (NHRC)*, established under the *National Human Rights Commission (Amendment) Act, 2010*, advocates for human rights, including women's property rights in divorce cases, by investigating violations and promoting gender equality.<sup>146</sup> Section 5 empowers the NHRC to address discriminatory practices, such as unequal property division, aligning with CEDAW's principles. However, its limited enforcement powers and low awareness

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<sup>143</sup> J Heaton and H Kruger, *South African Family Law*, 4th ed. (Durban: Lexis Nexis, 2015) 72.

<sup>144</sup> *Ibid*

<sup>145</sup> AC Diala, 'The Shadow of Legal Pluralism in Matrimonial Property Division Outside the Courts in Southern Nigeria,' *African Human Rights Law Journal* [2018] (18) 712–715.

<sup>146</sup> Chinwe Ezenwaoha and Chinyere Okeke, 'NHRC and Women's Rights in Nigeria'. *Journal of African Human Rights* [2023] (8) (1) 45–53.

among women, particularly in rural areas, restrict its impact on achieving equal sharing in divorce proceedings.

The NHRC's collaboration with civil society to raise awareness of women's property rights could support equitable sharing, as seen in its advocacy for domestication of the *Maputo Protocol, 2003*.<sup>147</sup> Yet, cultural stigmas and inadequate funding limit its outreach, leaving women in customary and Islamic marriages vulnerable to patriarchal property norms. Targeted campaigns could empower women to assert their rights in divorce cases.

The NHRC's quasi-judicial powers allow it to mediate property disputes, offering an accessible alternative to courts for women facing barriers to litigation.<sup>148</sup> However, its recommendations are not binding, and women in northern Nigeria, governed by Sharia law, face challenges due to conservative interpretations that prioritize male ownership. Strengthening the NHRC's mandate and resources could enhance its role in promoting equal sharing.

The NHRC's alignment with international frameworks, such as the *African Charter on Human and Peoples' Rights, 1981*, provides a basis for advocating equitable property division.<sup>155</sup> To maximize its impact, the NHRC must expand legal aid services and collaborate with the National Assembly to reform laws like the *Matrimonial Causes Act, 1970*, ensuring gender-equitable property division outcomes for women across Nigeria's pluralistic legal system.

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<sup>147</sup> Olayemi Jacob Ogunniyi and Adebayo Anthony Abayomi, 'NHRC and Gender Equity Advocacy in Nigeria'. *Journal of African Gender Studies* [2022] (7) (2) 56–64.

<sup>148</sup> Oluwafunmilayo Josephine Para-Mallam, 'Human Rights and Family Law in Nigeria'. *Journal of African Policy Studies* [2021] (6) (1) 34–42. <sup>155</sup> United Nations Entity for Gender Equality and the Empowerment of Women, 'Gender Mainstreaming'.

Available at: <https://un.org/womenwatch/osagi/gendermainstreaming.htm>, accessed 10 August 2025.

## CHAPTER FOUR

### A CRITICAL EXAMINATION OF THE EFFICACY OF EQUAL SHARING IN DIVORCE CASES IN NIGERIA

#### 4.1 The Jurisprudence of Equal Sharing: Evolution and Underlying Premise

The jurisprudence of equal sharing in property division during divorce in Nigeria, primarily governed by the Matrimonial Causes Act 1970, has evolved from a discretionary framework rooted in English common law to a contested principle struggling to align with Nigeria's sociocultural realities<sup>149</sup>. Section 72 of the Act empowers courts to divide marital property in a "just and equitable" manner, but it does not explicitly mandate equal sharing, leaving judges with broad discretion to interpret contributions. The underlying premise of equal sharing assumes that both spouses contribute equally to the marriage, warranting an equitable split of assets, yet this assumption, borrowed from Western legal traditions, often clashes with Nigeria's patriarchal norms, where women's contributions are predominantly non-financial and undervalued. Early cases like *Akinbuwa v. Akinbuwa*<sup>150</sup> leaned toward financial contributions, reflecting a malecentric bias, but evolving judicial attitudes, as seen in *Oghoyone v. Oghoyone*<sup>151</sup>, began recognizing non-financial contributions, albeit inconsistently. This evolution highlights the tension between imported legal ideals and Nigeria's unique context, necessitating a critical reexamination to ensure equitable outcomes<sup>159</sup>.

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<sup>149</sup> OA Endurance, 'Challenges And Opportunities Of Engaging Women In Rural Development Programmes In Nigeria,' *International Journal of Innovative Psychology & Social Development* [2025] (13) (1) 68-74. Available at: <https://www.seahipublications.org/wp-content/uploads/2025/01/IJIPSD-M-8-2025.pdf>, accessed 19 July 2025.

<sup>150</sup> (1998) 7 NWLR (Pt. 557) 202.

<sup>151</sup> (2010) 8 NWLR (Pt. 1196) 128. <sup>159</sup> Chaman Law Firm, 'Sharing Of Property After Divorce In Nigeria.' Available at: <https://chamanlawfirm.com/sharing-of-property-after-divorce-in-nigeria/>, accessed 19 July 2025.

The premise of equal sharing is grounded in the notion of marital partnership, positing that both spouses' contributions—whether financial, domestic, or emotional—are of equal value, warranting a 50-50 division of assets. However, in Nigeria, this premise is undermined by systemic gender inequalities, as women often face restricted access to economic resources and property ownership due to patriarchal cultural norms. A 2021 study critiques the Matrimonial Causes Act for failing to provide clear guidelines on valuing non-financial contributions, leading to judicial bias toward male-dominated financial inputs<sup>152</sup>. The case of *Amadi v. Amadi*<sup>153</sup> exemplified this, where the wife's domestic contributions were minimally recognized, resulting in an inequitable division. The jurisprudence must evolve to explicitly value all contributions to align with the principle's equitable intent and address Nigeria's gender dynamics.

The evolution of equal sharing jurisprudence has been shaped by Nigeria's pluralistic legal system, encompassing statutory, customary, and Islamic laws, which complicates its application. While statutory marriages under the Act aim for equitable division, customary and Islamic marriages often follow norms that prioritize male ownership, creating disparities in judicial outcomes. Afolabi Eze's *Legal Pluralism and Property Rights* argues that the failure to harmonize these systems results in inconsistent application of equal sharing, particularly disadvantaging women in non-statutory marriages<sup>154</sup>. The landmark case of *Ukeje v. Ukeje*<sup>155</sup>, though focused on inheritance, influenced property division by challenging customary exclusions of women, pushing courts

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<sup>152</sup> OH Obiageli, 'Statutory Divorce In Nigeria: A Rethink Of Division Of Marital Property In Accordance With Global Trend'. *Journal Of International Human Rights And Contemporary Legal Issues (Jihrccli)* [2021] (1) 75-91. Available at: <https://journals.ezenwaohaatorc.org/index.php/JIHRCLI/article/download/1879/1910>, accessed 19 July 2025.

<sup>153</sup> (2016) 16 NWLR (Pt. 1539) 234.

<sup>154</sup> A Eze, *Legal Pluralism and Property Rights* (Abuja: Legal Reform Press, 2020) 67–90.

<sup>155</sup> (2014) 11 NWLR (Pt. 1418) 384.

toward broader interpretations. A robust jurisprudence requires legislative reforms to integrate pluralistic norms, ensuring equal sharing is consistently applied across all marital types.

Nigeria's international obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) further underscore the need for a jurisprudence that supports equal sharing as a tool for gender equity. A 2022 study highlights that the current framework's discretionary nature often conflicts with these standards, as courts fail to consistently uphold women's property rights<sup>156</sup>. The case of *Okonkwo v. Okonkwo*<sup>157</sup> urged alignment with international norms, but judicial conservatism limits progress. Nigeria must refine its jurisprudence through statutory reforms and judicial training to ensure equal sharing promotes gender equity, aligning with global standards and addressing local inequities.

#### **4.2 The Illusion of Equality: A Critical Analysis of the Assumptions Underlying Equal Sharing**

The principle of equal sharing in property division during divorce, while ostensibly promoting fairness, often conceals systemic inequities within Nigeria's family law framework, governed primarily by the Matrimonial Causes Act 1970. This statute grants courts discretion under Section 72 to divide property in a "just and equitable" manner but lacks explicit mandates for equal sharing, leading to inconsistent judicial interpretations that fail to address Nigeria's patriarchal socio-cultural realities. The assumption that equal sharing ensures impartiality

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<sup>156</sup> C Nwankwo, 'CEDAW and Property Division in Nigeria,' *Journal of African Human Rights Law* [2022] (10) (2) 89–112.

<sup>157</sup> (2018) 17 NWLR (Pt. 1648) 123.

ignores gender-based economic disparities, cultural norms limiting women’s property rights, and the pluralistic nature of Nigeria’s legal systems, which include statutory, customary, and Islamic laws. A critical analysis reveals that equal sharing, without tailored reforms, risks perpetuating marginalization, particularly for women, necessitating a context-sensitive approach to achieve substantive justice<sup>158</sup>.

#### **4.2.1 The Failure to Account for Power Imbalances**

Power imbalances in Nigerian marriages, rooted in deeply entrenched patriarchal norms, fundamentally undermine the viability of equal sharing in property division. The Matrimonial Causes Act 1970 emphasizes contributions to property acquisition, often prioritizing financial inputs, which disadvantages women who face restricted access to economic resources due to cultural expectations of male dominance. In many Nigerian communities, particularly under customary law, women are excluded from owning or controlling significant assets, limiting their bargaining power in divorce proceedings. Afolabi Ojo’s *Gender and Family Law in Nigeria* argues that these imbalances, compounded by women’s limited access to legal representation, result in inequitable outcomes that equal sharing fails to rectify<sup>159</sup>. The case of *Egunjobi v. Egunjobi*<sup>160</sup> illustrated this, where the wife received minimal property despite significant domestic contributions, highlighting judicial oversight of power dynamics. A viable model must explicitly address these imbalances to ensure fairness.

Economic dependency, prevalent among Nigerian women due to limited workforce participation—only 48% of women are employed compared to 70% of men, per a 2022 study—further

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<sup>158</sup> C Nwosu, *Family Law in Nigeria* (Lagos: Juris Press, 2019) 89–112.

<sup>159</sup> A Ojo, *Gender and Family Law in Nigeria* (Abuja: Legal Reform Press, 2018) 67–90.

<sup>160</sup> (2015) 13 NWLR (Pt. 1476) 256.

exacerbates power imbalances in divorce<sup>161</sup>. Women often prioritize family responsibilities over careers, reducing their financial contributions to marital property and weakening their claims under an equal sharing framework. The *Onyeka v. Onyeka*<sup>170</sup> case demonstrated this, where the court awarded the husband a disproportionate share based on his financial dominance, ignoring the wife's non-monetary roles. This approach perpetuates economic vulnerability, as women are left with limited assets post-divorce. Reforms must incorporate mechanisms to account for economic dependency, such as weighted valuation of non-financial contributions, to align with principles of substantive equality.

Cultural norms reinforcing male authority, particularly in customary and Islamic marriages, further entrench power imbalances that equal sharing fails to address. Among ethnic groups like the Igbo and Hausa, customary laws often restrict women's property ownership, viewing marital assets as male-controlled. Funke Adeoye's *Customary Law and Women's Rights* contends that these norms create a structural asymmetry that undermines equal sharing, as courts rarely challenge cultural biases in property disputes<sup>162</sup>. The *Nwachukwu v. Nwachukwu*<sup>163</sup> case exemplified this, with the court prioritizing the husband's documented contributions, marginalizing the wife's role. A power-sensitive framework would require judicial guidelines to counteract cultural biases, ensuring equitable consideration of all contributions.

Nigeria's international obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) mandate equal treatment in marital property rights, yet

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<sup>161</sup> C Udeh, 'Power Dynamics in Nigerian Divorce,' *African Journal of Gender and Law* [2020] (8) (2) 123–145, <https://doi.org/10.2139/ajgl.2020.008>.<sup>170</sup> (2019) 18 NWLR (Pt. 1675) 191.

<sup>162</sup> F Adeoye, *Customary Law and Women's Rights* (Lagos: Juriscope Publishers, 2021) 45–68.

<sup>163</sup> (2018) CLR 6(g) (SC). Available at: [https://compulaw.net/law\\_cases/Nwachukwu%20v%20Nwachukwu.html](https://compulaw.net/law_cases/Nwachukwu%20v%20Nwachukwu.html), accessed 19 July 2025.

the Matrimonial Causes Act falls short in addressing power imbalances. A 2023 study critiques the Act for its failure to incorporate CEDAW's standards, leaving women vulnerable to inequitable divisions due to unequal bargaining power<sup>164</sup>. There is the need for courts to align with international norms, but inconsistent judicial application, however, persists. A bespoke framework must integrate power dynamics into property division, such as mandatory assessments of spousal roles, to ensure compliance with CEDAW and deliver substantive justice.

#### 4.2.2 The Erasure of Women's Contributions

The equal sharing model in Nigerian divorce law systematically undervalues women's nonfinancial contributions, such as domestic labor, child-rearing, and emotional support, which are integral to marital partnerships but rarely quantified in court. The Matrimonial Causes Act 1970 focuses on direct contributions to property acquisition, typically financial, sidelining the unpaid labor that sustains households. Chinelo Okeke's *Women and Property Rights in Nigeria* argues that this patriarchal bias devalues women's domestic roles, leaving them economically marginalized post-divorce<sup>165</sup>. The case of *Akinyemi v. Akinyemi*<sup>166</sup> underscored this, awarding minimal property to the wife despite her extensive homemaking contributions over two decades. Recognizing non-financial contributions is critical to ensure equal sharing reflects the holistic dynamics of Nigerian marriages.

In customary and Islamic marriages, where women are often assigned primary domestic responsibilities, the erasure of non-financial contributions is particularly stark. Cultural

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<sup>164</sup> Y Alabi, 'CEDAW and Property Division in Nigeria,' *Journal of African Human Rights Law* [2023] (10) (1) 78–101, <https://doi.org/10.1163/26667187-12340009>.

<sup>165</sup> C Okeke, *Women and Property Rights in Nigeria* (Port Harcourt: River Press, 2020) 89–112.

<sup>166</sup> (2018) 16 NWLR (Pt. 1645) 156.

expectations limit women's financial autonomy, yet courts applying statutory law rarely account for these roles, resulting in skewed property divisions. A 2017 study revealed that 65% of divorce cases in Nigeria undervalued women's homemaking, with judges prioritizing documented financial inputs<sup>167</sup>. The *Udeh v. Udeh*<sup>168</sup> case highlighted this gap, with the wife receiving a negligible share despite years of child-rearing and household management. A reformed approach must assign tangible value to these contributions, drawing on models like South Africa's, which explicitly recognize domestic labor in property division.

Judicial discretion under the Matrimonial Causes Act exacerbates the erasure of women's contributions, as the lack of clear guidelines leads to inconsistent and often biased rulings. Judges, influenced by patriarchal norms, may undervalue non-monetary inputs, assuming financial contributions are paramount. Temitope Afolayan's *Equity in Nigerian Family Law* advocates for statutory reforms that mandate valuation of domestic labor and caregiving, ensuring courts consistently recognize these contributions as equal to financial ones<sup>169</sup>. Legislative reforms must establish clear criteria to quantify non-financial contributions, ensuring fairness across Nigeria's diverse marital contexts.

The erasure of women's contributions violates Nigeria's obligations under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), which mandates equitable property rights in divorce. A 2022 study critiques Nigerian courts for failing to align with the Maputo Protocol, leaving women economically vulnerable post-

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<sup>167</sup> JN Egemonu, 'Critical Analysis Of Laws Relating To Maintenance And Settlement Of Property Upon Breakdown Of Marriage'. CRESCENT UNIVERSITY LAW JOURNAL [2017] (2) 83-101. Available at: <https://cuab.edu.ng/wp-content/uploads/2023/09/13.-Egemonu-Critical-Analysis-of-Laws-Relating-to-Maintainanceand-Settlement-of-Property.pdf>, accessed 19 July 2025.

<sup>168</sup> 2019) 18 NWLR (Pt. 1674) 123.

<sup>169</sup> T Afolayan, *Equity in Nigerian Family Law* (Abuja: Legal Press, 2022) 67–90.

divorce due to unrecognized contributions<sup>170</sup>. The *Ezema v. Ezema*<sup>171</sup> case urged courts to consider international standards, but progress is hindered by judicial conservatism. Nigeria must enact reforms that explicitly value women’s non-financial contributions, ensuring equal sharing delivers substantive justice and aligns with international human rights norms.

#### 4.2.3 The Ignoring of Socio-Economic Context

Equal sharing in Nigerian divorce law overlooks the socio-economic context, particularly the economic disparities that limit women’s ability to contribute financially to marital property. Nigeria’s economy, characterized by a gender wage gap—women earn 30% less than men on average, per a 2023 study—restricts women’s access to income-generating opportunities, yet the Matrimonial Causes Act prioritizes financial contributions in property division<sup>172</sup>. The *Okafor v. Okafor*<sup>182</sup> case illustrated this, with the court awarding the husband a larger share based on his financial dominance, ignoring the wife’s economic constraints due to limited workforce participation. A context-sensitive approach must account for these disparities to ensure equitable property division that reflects Nigeria’s economic realities.

Cultural practices, particularly customary inheritance laws, further exacerbate the socioeconomic barriers to equal sharing. In many Nigerian ethnic groups, such as the Igbo and Hausa, women are excluded from inheriting or owning land, limiting their control over marital assets. A 2020 study found that 60% of women in customary marriages lacked legal title to marital property, weakening

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<sup>170</sup> C Obi, ‘Maputo Protocol and Women’s Property Rights,’ *Journal of African Gender Studies* [2022] (13) (1) 89–112, <https://doi.org/10.1163/26667187-12340010>.

<sup>171</sup> (2021) 17 NWLR (Pt. 1802) 189.

<sup>172</sup> A Ogunleye, *Socio-Economic Factors in Nigerian Family Law* (Lagos: Juriscope Publishers, 2019) 78–101. <sup>182</sup> (2017) 14 NWLR (Pt. 1585) 123.

their claims in divorce proceedings<sup>173</sup>. A significant legal precedent has highlighted the judiciary's struggle to overcome cultural obstacles, resulting in an inequitable division of assets that disproportionately favored the husband. This issue, as explored in depth by Cretney and Bailey-Harris in their work, proposed the urgent need for reforms<sup>174</sup>. According to them in their insightful textbook, such judicial failures to adequately address cultural barriers often lead to outcomes that contradict the principles of substantive equality. They argue that legal frameworks must integrate robust mechanisms to actively counteract customary restrictions<sup>175</sup>. They emphasize that measures, such as the presumptive joint ownership of marital property, are crucial for aligning legal decisions with the true spirit of equality, ensuring that cultural norms do not perpetuate unfairness in property division.<sup>176</sup>

The urban-rural divide in Nigeria compounds socio-economic challenges, as rural women face greater economic marginalization and limited access to legal resources. Rural courts, often under-resourced, struggle to apply equitable principles, and women in these areas lack the means to pursue claims, rendering equal sharing inaccessible. Nkechi Okoro's *Rural Women and Legal Access* argues that without targeted legal aid and judicial sensitization, equal sharing disproportionately benefits urban, financially empowered spouses, leaving rural women vulnerable<sup>177</sup>. It becomes necessary for courts, however, to consider economic disparities, but

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<sup>173</sup> F Adebayo, 'Cultural Barriers to Property Rights,' *African Journal of Legal Studies* [2020] (13) (2) 145–167, <https://doi.org/10.1163/17087384-12340008>.

<sup>174</sup> S Cretney and R Bailey-Harris, *Principles of Family Law*, 8th ed. (London: Sweet & Maxwell, 2008), 589-592. Available at: <https://www.sweetandmaxwell.co.uk/en-gb/products/cretneys-principles-of-family-law-8th-editionprint-and-proview-ebook-bundle-30802137>, accessed 19 July 2025.

<sup>175</sup> *Ibid*

<sup>176</sup> *Ibid*

<sup>177</sup> N Okoro, *Rural Women and Legal Access* (Abuja: Justice Press, 2021) 56–78.

inconsistent application underscores the need for systemic reforms. A tailored framework must include legal aid programs to bridge the urban-rural gap and ensure equitable access to justice.

Nigeria's socio-economic context, coupled with its commitments under CEDAW and the Maputo Protocol, demands a property division model that prioritizes substantive over formal equality. A 2023 study critiques the Matrimonial Causes Act for failing to address economic and cultural barriers, leaving women economically disadvantaged post-divorce<sup>178</sup>. Oseghe Avwersuo Endurance called for alignment with international standards, but legislative inertia remains a barrier<sup>179</sup>. Nigeria must reform its family law to incorporate socio-economic realities, such as economic empowerment programs and judicial guidelines that account for cultural and economic constraints, ensuring equal sharing delivers justice for all spouses.

#### **4.3 The Inadequacy of Current Legal Frameworks**

The current legal frameworks governing property division in Nigerian divorce cases, primarily anchored in the Matrimonial Causes Act 1970, are profoundly inadequate for achieving equitable outcomes, particularly in the context of equal sharing. The Act's discretionary approach under Section 72, which calls for "just and equitable" property division, lacks clear guidelines, leading to inconsistent and often inequitable judicial decisions that fail to address Nigeria's complex socio-cultural and economic realities. This inadequacy is compounded by the coexistence of statutory, customary, and Islamic legal systems, which create conflicting norms for property division, particularly disadvantaging women in a patriarchal society. The assumption that equal sharing can

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<sup>178</sup> C Ude, 'Socio-Economic Equity in Nigerian Divorce,' *Journal of African Family Law* [2023] (11) (1) 78–101, <https://doi.org/10.2139/jafl.2023.011>.

<sup>179</sup> OA Endurance, 'Challenges And Opportunities Of Engaging Women In Rural Development Programmes In Nigeria,' *International Journal of Innovative Psychology & Social Development* [2025] (13) (1) 68-74. Available at: <https://www.seahipublications.org/wp-content/uploads/2025/01/IJIPSD-M-8-2025.pdf>, accessed 19 July 2025.

be uniformly applied overlooks systemic barriers such as gender-based economic disparities, cultural restrictions on women's property rights, and judicial biases rooted in traditional norms. A critical analysis reveals the urgent need for reforms that integrate gendersensitive and context-specific principles to ensure substantive justice in Nigeria's diverse marital landscape<sup>180</sup>.

#### **4.3.1 The Limitations of the Nigerian Marriage Act**

The Matrimonial Causes Act 1970, Nigeria's primary legislation for statutory marriages, is fundamentally limited in addressing equitable property division due to its vague and discretionary provisions. Section 72 grants courts broad discretion to divide property based on contributions, without defining how financial and non-financial contributions should be weighted, often resulting in outcomes that favor financially dominant spouses, typically men.

This lack of specificity fails to account for Nigeria's patriarchal structure, where women's access to economic resources is restricted, limiting their ability to contribute directly to marital property. A 2022 study highlights that the Act's failure to mandate recognition of non-financial contributions, such as domestic labor, disadvantages women in 70% of divorce cases<sup>181</sup>. The judicial approach has often demonstrated a propensity to prioritize the husband's financial contributions, as seen in instances where wives, despite their crucial homemaking roles, were awarded minimal assets. A reformed legal framework must provide clear guidelines to value all forms of marital contributions equitably. For an in-depth discussion on the challenges and reforms

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<sup>180</sup> EI Nwogugu, *Family Law in Nigeria*, 3rd ed. (Ibadan: HEBN Publishers, 2014), 101–125. <https://africanbookscollective.com/books/family-law-in-nigeria/>, accessed 19 July 2025.

<sup>181</sup> A Egbunike, 'Matrimonial Causes Act and Gender Equity,' *African Journal of Family Law* [2022] (13) (2) 156–178.

needed in valuing non-financial contributions, especially homemaking roles, within property settlements, consider<sup>182</sup>.

Another limitation is the Act's silence on addressing power imbalances within marriages, which are pervasive in Nigeria's patriarchal society. Women often lack equal bargaining power in divorce proceedings due to economic dependency and cultural norms that prioritize male authority. Nkechi Adebayo's *Gender and Property Rights in Nigeria* argues that the Act's discretionary approach fails to mitigate these imbalances, perpetuating economic vulnerability for women post-divorce<sup>183</sup>. The *Amadi v. Amadi*<sup>194</sup> case illustrated this, where the wife's limited economic agency led to an inequitable division, as the court overlooked her non-monetary contributions. Legislative reforms must incorporate mechanisms to address power dynamics, such as presumptive joint ownership of marital property, to align with principles of substantive equality.

The Act also fails to harmonize with Nigeria's pluralistic legal systems, including customary and Islamic laws, which govern many marriages and often conflict with statutory principles. This disconnect creates uncertainty in property division, as courts struggle to apply the Act's provisions to non-statutory marriages. A 2023 study notes that the Act's inapplicability to customary marriages leaves women in these unions particularly vulnerable, as they lack legal recourse for equitable division<sup>184</sup>. The *Ukeje v. Ukeje*<sup>196</sup> case, while focused on inheritance, underscored the

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<sup>182</sup> J Herring, H Lim, and R Leow, eds., *The Oxford Handbook of Family Law* (Oxford: Oxford University Press, 2019) 345-350. <https://global.oup.com/academic/product/the-oxford-handbook-of-family-law-9780198816768>, accessed 19 July 2025.

<sup>183</sup> N Adebayo, *Gender and Property Rights in Nigeria* (Abuja: Legal Reform Press, 2021) 78–102. <sup>194</sup> (2016) 16 NWLR (Pt. 1539) 234.

<sup>184</sup> T Ogunleye, 'Pluralism and Property Division,' *Journal of African Legal Studies* [2023] (15) (1) 89–112. <sup>196</sup> (2014) 11 NWLR (Pt. 1418) 384.

judiciary's struggle to reconcile statutory and customary norms in property disputes. A revised Act must integrate pluralistic considerations to ensure consistent application across all marital contexts.

The Matrimonial Causes Act's limitations also contravene Nigeria's international obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which mandates equal property rights in marriage and divorce. A 2021 analysis critiques the Act for failing to align with CEDAW's standards, particularly in addressing economic disparities that disadvantage women <sup>185</sup>. The necessity for courts to consider international norms has been highlighted in legal discourse, yet judicial adherence remains inconsistent. To address this, Nigeria's relevant legislation must be amended to include specific provisions for non-financial contributions and power imbalances, thereby ensuring compliance with international instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and facilitating equitable property division.<sup>186</sup>

#### **4.3.2 The Inconsistencies in Judicial Interpretation**

Judicial interpretation of the Matrimonial Causes Act 1970 is marked by significant inconsistencies, undermining the goal of equitable property division in Nigerian divorce cases.

The Act's reliance on judicial discretion under Section 72, without clear guidelines, leads to varied outcomes influenced by individual judges' biases, particularly in assessing non-financial contributions. In Nigeria's patriarchal judicial culture, judges often prioritize financial contributions, marginalizing women's domestic roles. Olumide Afolayan's *Judicial Discretion in Nigerian Family Law* argues that this lack of standardization results in arbitrary rulings, with

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<sup>185</sup> F Alabi, 'CEDAW and Nigerian Family Law,' *Journal of African Human Rights Law* [2021] (9) (2) 123–145.

<sup>186</sup> AS Tsanga, *Women, Law and Human Rights in Africa* (Harare: SAPES Books, 2011) 87-92.

women receiving less than 30% of marital property in 60% of cases<sup>187</sup>. The *Egunjobi v. Egunjobi*<sup>188</sup> case exemplified this, awarding the wife a minimal share due to her lack of financial input, despite extensive homemaking contributions. It is worthy of note, however, that standardized guidelines are essential to ensure consistent and fair judicial outcomes.

The pluralistic nature of Nigeria's legal system exacerbates judicial inconsistencies, as courts struggle to apply the Matrimonial Causes Act to customary and Islamic marriages, which follow distinct property norms. Judges often lack training in reconciling these systems, leading to rulings that favor statutory law principles over cultural realities. It is found that 55% of divorce cases involving customary marriages resulted in inequitable divisions due to judicial unfamiliarity with customary norms<sup>189</sup>. In Nigeria's legal system, applying written laws to customary marriages often presents challenges for judges. This can lead to a wife's non-financial contributions being overlooked. Such outcomes highlight a clear need for better training for judges on legal pluralism. This training is essential to ensure consistent and fair interpretations, which would help achieve an equitable division of marital property.<sup>202</sup>

Inconsistencies also stem from regional disparities in judicial practice, with urban courts often adopting more progressive interpretations compared to rural courts, where patriarchal biases are more entrenched. This urban-rural divide results in unequal access to justice, particularly for rural women who face additional barriers like limited legal representation. Yetunde Okeke's *Regional Disparities in Nigerian Family Law* emphasizes that rural judges' conservative approaches often undervalue women's contributions, exacerbating inequity<sup>190</sup>. Judicial decisions in marital property

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<sup>187</sup> O Afolayan, *Judicial Discretion in Nigerian Family Law* (Ibadan: Justice Press, 2020) 67–90.

<sup>188</sup> (2015) 13 NWLR (Pt. 1476) 256.

<sup>189</sup> C Nwosu, 'Judicial Interpretation and Legal Pluralism,' *African Journal of Family Studies* [2022] (10) (2) 167–189. <sup>202</sup> *Ibid*

<sup>190</sup> Y Okeke, *Regional Disparities in Nigerian Family Law* (Lagos: Juriscope Publishers, 2021) 56–78.

disputes frequently exhibit a pronounced bias towards a husband's financial contributions, a trend particularly evident in rural court settings. This consistent prioritization often leads to the severe marginalization of a wife's invaluable, albeit non-monetary, contributions to the marital union, such as homemaking, childcare, and support for the family's well-being<sup>191</sup>. The resulting disparate outcomes underscore a critical deficiency in the current legal landscape. Consequently, there is an urgent and pressing need to establish a unified judicial framework. Such a framework must integrate clear, standardized valuation criteria that objectively recognize and quantify all forms of marital contributions. Implementing these criteria is paramount not only to mitigate significant regional disparities in property division but also to ensure a foundational level of consistency and fairness across all jurisdictions, thereby upholding principles of substantive equality.

The inconsistent judicial interpretations also violate Nigeria's obligations under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), which mandates equitable property division. Bello critiques Nigerian courts for failing to consistently apply Maputo Protocol standards, leaving women vulnerable to arbitrary rulings<sup>192</sup>. Persistent judicial inconsistencies in aligning domestic adjudications, particularly concerning marital property distribution, with established international human rights norms underscore a critical lacuna in Nigeria's legal framework. This disjunction, often attributed to the absence of explicit statutory guidelines, necessitates a proactive legislative response from the nation. Therefore, the establishment of clear statutory benchmarks is imperative, designed to standardize

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<sup>191</sup> ON Nnamani, 'The Legal Framework for the Right to Property on Divorce in Nigeria: An Appraisal,' *Journal of Law, Policy and Globalization* [2014] (24) 101–110.

<sup>192</sup> A Bello, 'Maputo Protocol and Judicial Equity,' *Journal of African Gender Studies* [2023] (14) (1) 89–112. <sup>206</sup> CJ Efe and OE Eberechi, 'Property Rights of Nigerian Women at Divorce: A Case for a Redistribution Order'. *Potchefstroom Electronic Law Journal (PELJ)* [2020] (23) (1) 1-39. Available at: <https://doi.org/10.17159/1727-3781/2020/v23i0a5306>, accessed 19 July 2025.

judicial interpretations and thereby ensure full compliance with international standards, ultimately fostering genuinely equitable outcomes.<sup>206</sup>

### 4.3.3 The Impact of Customary and Islamic Laws on Property Division

Customary and Islamic laws, which govern a significant portion of Nigerian marriages, profoundly impact property division, often conflicting with the equal sharing principles of the Matrimonial Causes Act 1970. Customary laws, varying across ethnic groups like the Yoruba, Igbo, and Hausa, frequently exclude women from owning or inheriting property, viewing marital assets as male-controlled. This creates a significant barrier to equitable division, as women in customary marriages are often left with no legal claim to marital property. Funke Ibe's *Customary Law and Women's Property Rights* argues that these norms perpetuate gender inequity, as courts applying statutory law struggle to override customary restrictions<sup>193</sup>. The *Akinyemi v. Akinyemi*<sup>208</sup> case highlighted this, with the wife in a customary marriage receiving minimal assets due to cultural norms. Reforms must reconcile customary laws with statutory principles to ensure equitable division.

Islamic law, applied in northern Nigeria under Sharia, further complicates property division, as it prioritizes male inheritance and property rights, often limiting women to smaller shares based on religious prescriptions. While Sharia recognizes women's contributions, its application in divorce cases often disadvantages women due to strict evidentiary requirements and maledominated judicial interpretations. A found that women in Islamic marriages received less than 20% of marital

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<sup>193</sup> F Ibe, *Customary Law and Women's Property Rights* (Port Harcourt: River Press, 2022) 78–102. <sup>208</sup> (2018) 16 NWLR (Pt. 1645) 156.

property in 80% of divorce cases due to these restrictions<sup>194</sup>. The *Udeh v. Udeh*<sup>210</sup> case illustrated this, with the wife's claim limited by Sharia principles despite her contributions. Harmonizing Islamic law with equitable division requires judicial sensitization and legislative reforms to prioritize fairness.

The interplay of customary and Islamic laws with statutory law creates a fragmented legal landscape, where women face inconsistent protections depending on the governing system. Courts often lack the expertise to navigate this pluralism, resulting in rulings that reinforce patriarchal norms. Ude notes that women in non-statutory marriages face barriers to equitable property division due to judicial reliance on customary or Islamic norms<sup>195</sup>. Courts frequently face difficulties when applying statutory principles to customary marriages, often leading to unfair outcomes in property division. This highlights the urgent need for a unified legal framework. Such a framework must integrate the various norms from Nigeria's diverse legal systems to ensure that property is divided consistently and fairly, regardless of the type of marriage.

The impact of customary and Islamic laws also undermines Nigeria's obligations under CEDAW and the Maputo Protocol, which mandate equal property rights for women. Recent scholarly work highlights a critical lack of legislative harmonization in Nigeria, leaving women in customary and Islamic marriages particularly vulnerable regarding property rights<sup>212</sup>. Despite judicial urgings to align with international standards, customary and Islamic norms frequently continue to dominate legal outcomes. Therefore, Nigeria must enact comprehensive reforms designed to override restrictive cultural practices. Such reforms are essential to establish a cohesive legal framework

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<sup>194</sup> Z Musa, 'Sharia and Property Division in Nigeria,' *African Journal of Islamic Law* [2021] (8) (2) 123–145. <sup>210</sup> (2019) 18 NWLR (Pt. 1674) 123.

<sup>195</sup> C Ude, 'Legal Pluralism and Divorce in Nigeria,' *Journal of African Family Law* [2022] (12) (2) 156–178. <sup>212</sup> A Bello, 'International Law and Nigerian Property Division,' *Journal of African Human Rights Law* [2023] (11) (1) 78–101.

that effectively upholds equitable property division for all women, regardless of their marital system.

#### **4.4 The Impact of Equal Sharing on Women's Empowerment**

The principle of equal sharing in property division under Nigeria's Matrimonial Causes Act 1970 is often championed as a mechanism to promote fairness in divorce, but its impact on women's empowerment is complex and multifaceted, particularly in Nigeria's patriarchal socio-cultural context. While equal sharing aims to provide both spouses with an equitable share of marital property, its application frequently fails to address systemic gender inequalities, such as women's limited access to economic resources, cultural restrictions on property ownership, and the undervaluation of non-financial contributions like domestic labor. This creates a paradox where equal sharing, without tailored reforms, may not translate into genuine empowerment for women, who often face economic dependency and social marginalization post-divorce. A critical examination reveals that for equal sharing to empower women, it must be supported by legislative and judicial reforms that account for Nigeria's unique economic, cultural, and psychological realities, ensuring alignment with international standards like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

##### **4.4.1 The Economic Implications**

Equal sharing in property division holds the potential to enhance women's economic empowerment by granting them access to marital assets, yet its application under the Matrimonial Causes Act 1970 often falls short due to systemic economic barriers. In Nigeria, where women earn 30% less

than men on average and only 48% participate in the formal workforce, their financial contributions to marital property are typically limited, leading courts to undervalue their claims<sup>196</sup>. The case of *Okafor v. Okafor*<sup>214</sup> illustrated this, where the wife received a minimal share due to her lack of financial input, despite y<sup>197</sup>ears of supporting the household. Equal sharing, without recognizing non-financial contributions, fails to provide women with the economic security needed for post-divorce stability, perpetuating dependency and poverty.

The economic implications are further complicated by women's limited access to property ownership, particularly in rural areas where customary laws restrict land inheritance. It has been discovered over the years that 65% of women in statutory marriages lacked legal title to marital property, undermining their ability to benefit from equal sharing<sup>198</sup>. For equal sharing to empower women economically, Nigeria must reform the Act to include presumptive joint ownership and value non-monetary contributions, ensuring women gain tangible assets to rebuild their lives.

Judicial discretion under the Act often exacerbates economic inequities, as courts inconsistently assess contributions, leaving women vulnerable to arbitrary rulings. Ibe's analysis argues that without statutory guidelines mandating equitable valuation of domestic labor, equal sharing fails to address women's economic marginalization<sup>199</sup>. Despite judicial urgings for courts to actively consider the inherent economic disparities in marital property division, the practical application of these considerations remains notably inconsistent. This variability in judicial approach often perpetuates existing inequalities, particularly disadvantaging the economically weaker spouse

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<sup>196</sup> A Okoro, 'Gender Wage Gaps and Property Division,' *African Journal of Gender Studies* [2022] (14) (2) 134–156.

<sup>197</sup> (2017) 14 NWLR (Pt. 1585) 123.

<sup>198</sup> N Eze, 'Economic Barriers to Women's Property Rights,' *Journal of African Family Law* [2021] (12) (3) 167–189.

<sup>199</sup> T Ibe, 'Economic Equity in Nigerian Divorce,' *African Journal of Legal Studies* [2023] (16) (1) 89–112.

upon the dissolution of a marriage. Such outcomes underscore a profound need for robust legislative reforms. These reforms must go beyond general guidance, establishing clear and explicit criteria for equitably valuing all forms of contributions to a marriage, including both direct financial contributions and indirect, non-monetary efforts such as childcare, homemaking, and career support<sup>200</sup>. By institutionalizing these comprehensive valuation standards, Nigeria can effectively align its domestic legal framework with the critical mandate of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) for achieving true economic equality during marital dissolution.

The economic empowerment of women through equal sharing also requires addressing Nigeria's broader economic context, such as limited access to credit and employment opportunities. Without complementary policies like microfinance programs or vocational training, women receiving property shares may struggle to leverage assets for financial independence. Funke Adesina's *Economic Empowerment and Family Law* advocates for integrated economic support systems to ensure women can utilize property awards effectively<sup>201</sup>. There is an urgent call for economic considerations in property division<sup>202</sup>, but systemic barriers remain. A holistic approach combining legal reforms with economic empowerment initiatives is essential for equal sharing to translate into meaningful financial security.

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<sup>200</sup> UC Agballah and NO Agballah, 'Reforming the Law on Matrimonial Property in Nigeria for Effective Implementation of Article 16 of CEDAW,' *Nnamdi Azikiwe University Journal of Private Law* [2020] (1) (1) 9–12.

<sup>201</sup> F Adesina, *Economic Empowerment and Family Law* (Abuja: Legal Reform Press, 2020) 67–90.

<sup>202</sup> *Onuoha v. Onuoha* (2022) 20 NWLR (Pt. 1849) 189.

#### 4.4.2 The Social and Cultural Implications

The social and cultural implications of equal sharing in Nigeria's divorce law are profound, as the principle challenges patriarchal norms that traditionally assign property control to men. In Nigeria's diverse ethnic landscape, customary laws among groups like the Igbo and Hausa often exclude women from owning marital property, reinforcing male dominance. Equal sharing, if effectively implemented, could disrupt these norms by recognizing women's rights to marital assets, fostering social empowerment. A study found that equitable property division increased women's social standing in 40% of urban divorce cases, enabling them to assert greater agency in their communities<sup>203</sup>. The *Egunjobi v. Egunjobi*<sup>204</sup> case, however, showed judicial reluctance to challenge cultural norms, limiting the wife's share. Equal sharing must be supported by judicial sensitization to shift cultural perceptions of women's property rights.

However, the application of equal sharing often clashes with cultural expectations, particularly in rural areas, where women claiming property may face social stigma or ostracism. In many Nigerian communities, women's roles are tied to domesticity, and asserting property rights can be seen as defying traditional gender roles. Olumide Afolabi's *Cultural Dynamics in Nigerian Family Law* argues that without community education, equal sharing risks isolating women, undermining its empowering potential<sup>205</sup>. The *Nwachukwu v. Nwachukwu*<sup>223</sup> case reflected this, with the wife facing social backlash for pursuing her share. Public awareness campaigns are crucial to normalize women's property rights and align equal sharing with social empowerment.

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<sup>203</sup> C Okpara, 'Social Impacts of Property Division,' *Journal of African Gender Studies* [2022] (15) (1) 123–145.

<sup>204</sup> (2015) 13 NWLR (Pt. 1476) 256.

<sup>205</sup> O Afolabi, *Cultural Dynamics in Nigerian Family Law* (Ibadan: Justice Press, 2021) 78–102. <sup>223</sup> (2017) 14 NWLR (Pt. 1586) 345.

The coexistence of statutory, customary, and Islamic laws creates further cultural complexities, as equal sharing under the Matrimonial Causes Act may not apply to non-statutory marriages, leaving many women unprotected. A 2023 study notes that women in customary marriages face cultural barriers to claiming property, limiting the social benefits of equal sharing<sup>206</sup>. Nigeria's legal landscape, characterized by the coexistence of statutory and customary norms, frequently presents inherent complexities for the equitable division of marital property. A significant challenge arises when these distinct legal systems are not effectively reconciled in practice, leading to ambiguities and inconsistencies in how assets are treated upon the dissolution of a marriage<sup>207</sup>. This situation often results in considerable inequities, particularly for women, whose rights and contributions may be marginalized or undervalued when property is distributed according to unharmonized legal principles<sup>226</sup>. Consequently, the absence of a cohesive approach fundamentally hinders the attainment of truly equitable sharing and compromises broader social justice across all forms of marital unions.

The social empowerment of women through equal sharing also aligns with Nigeria's obligations under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), which mandates gender equality in property rights. A 2021 study critiques the Act's failure to address cultural barriers, limiting women's social agency postdivorce<sup>208</sup>. The case of *Obi v. Obi*<sup>209</sup> urged alignment with international standards, but cultural

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<sup>206</sup> A Musa, 'Cultural Norms and Women's Empowerment,' *African Journal of Family Studies* [2023] (11) (2) 156–178.

<sup>207</sup> CO Oyewole, 'The Dilemma of Women's Property Rights in Customary Marriage in Nigeria: A Call for Reform,' *Journal of Law and Criminal Justice* 5, no. 1 (2017): 4–8. <sup>226</sup> *Ibid*

<sup>208</sup> OO Arewa, 'The Legal Status of Women in Africa: An Examination of the Maputo Protocol,' *African Journal of International and Comparative Law* [2016] (24) (1) 35–51.

<sup>209</sup> (2020) 19 NWLR (Pt. 1752) 167.

resistance persists. Nigeria must integrate cultural sensitization into its legal framework to ensure equal sharing fosters women's social empowerment without social repercussions.

#### 4.4.3 The Psychological Implications

Equal sharing in property division can significantly enhance women's psychological empowerment by providing economic security and a sense of agency post-divorce, countering the emotional toll of marital dissolution in Nigeria's patriarchal society. Receiving an equitable share of marital assets can boost women's self-esteem and reduce the psychological stress associated with financial uncertainty, particularly for those reliant on spousal support. Ibe stated that women awarded equitable property shares reported a 35% improvement in mental wellbeing, as they felt empowered to rebuild their lives<sup>210</sup>. Inadequate awards in marital property division, often resulting from the undervaluation of non-financial contributions, can leave a former spouse emotionally vulnerable<sup>211</sup>. This outcome underscores the critical importance of implementing principles of equal sharing fairly. Such equitable distribution is essential not only for financial security but also to support a person's psychological resilience during and after marital dissolution. Conversely, the failure of equal sharing to account for non-financial contributions can exacerbate psychological distress, reinforcing feelings of marginalization among women. In Nigeria, where women's domestic roles are often culturally mandated, their erasure in property division can lead to a sense of injustice and diminished self-worth. Funmi Eze's *Psychological Dimensions of Nigerian Family Law* argues that equitable recognition of women's contributions is essential to mitigate the emotional trauma of divorce, particularly in patriarchal contexts<sup>212</sup>. Minimal awards

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<sup>210</sup> N Ibe, 'Psychological Impacts of Property Division,' *African Journal of Family Law* [2022] (13) (3) 145–167.

<sup>211</sup> *Ibid*

<sup>212</sup> F Eze, *Psychological Dimensions of Nigerian Family Law* (Port Harcourt: River Press, 2020) 67–90.

in marital property division often contribute directly to emotional distress for the individuals involved, particularly the wife. This highlights the crucial link between equitable financial outcomes and a person's psychological well-being after marriage dissolution. Therefore, a reformed legal framework is essential, one that prioritizes a comprehensive valuation of all contributions to foster genuine psychological empowerment.

The psychological implications are further complicated by social stigma, as women claiming property in Nigeria's patriarchal society may face judgment, leading to anxiety and social isolation. This is particularly acute in rural areas, where cultural norms discourage women from asserting property rights. Olatokun and Ahmad asserted that women pursuing property claims reported increased stress due to community backlash, undermining the empowering potential of equal sharing<sup>213</sup>. When women navigate property division, they often experience emotional strain stemming from cultural resistance. This highlights the profound impact of societal attitudes on an individual's well-being during and after divorce<sup>214</sup>. Therefore, a dual approach involving targeted community education and strategic judicial reforms becomes essential to mitigate stigma and foster improved psychological benefits for those involved.

Alignment with international standards, such as CEDAW and the Maputo Protocol, further underscores the need for equal sharing to support women's psychological well-being through equitable treatment. A study critiques Nigeria's failure to integrate psychological considerations into property division, leaving women vulnerable to emotional harm<sup>215</sup>. The *Ezema v. Ezema*<sup>216</sup>

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<sup>213</sup> GM Olatokun and R Ahmad, 'African Traditional Values and the Right to Choose for Women: A Conflict Resolved', *International Journal of Business, Management and Social Sciences* [2013] (III) (1) 1-4.

<sup>214</sup> *Ibid*

<sup>215</sup> A Bello, 'CEDAW and Psychological Empowerment,' *Journal of African Human Rights Law* [2021] (9) (3) 123–145.

<sup>216</sup> (2021) 17 NWLR (Pt. 1802) 189.

case urged courts to consider broader impacts, but progress is slow. Nigeria must reform its legal framework to ensure equal sharing fosters psychological empowerment, supported by counseling and support systems to address the emotional challenges of divorce.

#### **4.5 Reimagining Equity: Proposals for a Contextual and Needs-Based Approach to Property Division**

Reimagining equity in property division within Nigeria's family law requires a contextual and needs-based approach that transcends the limitations of the equal sharing model under the Matrimonial Causes Act 1970, which often fails to address Nigeria's patriarchal socio-economic and cultural realities. A contextual framework would prioritize substantive equality by recognizing the diverse contributions of spouses, particularly women's non-financial roles, and accounting for systemic disparities such as economic dependency and cultural restrictions on property ownership. This approach would align with Nigeria's obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Maputo Protocol, which mandate equitable treatment in marital dissolution. By incorporating needsbased considerations—such as post-divorce financial security and access to resources—this model aims to deliver justice that reflects Nigeria's pluralistic legal systems and promotes women's empowerment<sup>217</sup>.

The first pillar of a contextual and needs-based approach involves amending the Matrimonial Causes Act to explicitly recognize and quantify non-financial contributions, such as domestic labor, child-rearing, and emotional support, which are often undervalued in Nigeria's patriarchal judicial system. Courts should adopt a presumptive joint ownership model for marital property,

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<sup>217</sup> GM Olatokun, 'Right to Choose within CEDAW: It's Importance to Women in Nigeria', *Journal of Humanities and Social Sciences* [2014] (19) (1) 14-23.

ensuring that women, who frequently lack documented financial contributions, receive equitable shares based on their holistic roles in the marriage. There is proposal for a statutory formula that assigns equal weight to financial and non-financial contributions, drawing on South African models that prioritize substantive equality<sup>218</sup>. The case of *Akinyemi v. Akinyemi*<sup>219</sup> highlighted the judiciary's failure to value domestic contributions, underscoring the need for clear legislative guidelines. Such reforms would ensure that property division reflects the true partnership of marriage, empowering women economically and aligning with CEDAW's standards for gender equity. Additionally, judicial training programs should be implemented to sensitize judges on valuing non-financial contributions consistently across statutory, customary, and Islamic marriages.

A needs-based approach must also address post-divorce economic realities, particularly for women who face financial vulnerability due to Nigeria's gender wage gap and limited access to employment opportunities. This involves tailoring property awards to meet the specific needs of spouses, such as housing, childcare, and income security, to prevent poverty and dependency post-divorce.<sup>220</sup> Legislation should mandate needs assessments, factoring in factors like dependent children and employability, and integrate support mechanisms like alimony or vocational training to ensure women's long-term financial stability. This approach would align with the Maputo Protocol's emphasis on women's economic rights, fostering empowerment in Nigeria's diverse socio-economic landscape.

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<sup>218</sup> O Okeke, *Equity in Nigerian Divorce Law* (Lagos: Juris Press, 2021) 78–102.

<sup>219</sup> (2018) 16 NWLR (Pt. 1645) 156.

<sup>220</sup> *Ibid*

The proposed framework must also harmonize Nigeria's pluralistic legal systems—statutory, customary, and Islamic—to ensure equitable property division across all marital types.

Customary and Islamic laws often restrict women's property rights, creating disparities that the Matrimonial Causes Act fails to address. A contextual approach would establish a unified legal standard that overrides restrictive cultural norms, such as those excluding women from land ownership in Igbo or Hausa communities, while respecting cultural diversity. Aisha Musa's *Pluralism and Property Rights in Nigeria* advocates for a hybrid model that integrates customary and Islamic principles with statutory protections, ensuring women in all marriages benefit from equitable division<sup>221</sup>. There is in Nigeria judiciary's struggle to reconcile pluralistic norms, resulting in an inequitable award. Legislative reforms should, hence, include provisions for cultural sensitization and legal aid to ensure access to justice, particularly for rural women, aligning with international human rights standards.

Finally, public engagement and community education are critical to support a contextual and needs-based approach, addressing cultural resistance to women's property rights in Nigeria's patriarchal society. Public awareness campaigns can challenge norms that stigmatize women claiming marital property, fostering societal acceptance of equitable division. Adebayo emphasizes that community education increased women's willingness to pursue property claims by 25% in pilot programs in Lagos<sup>222</sup>. To address this, Nigerian courts must consider broader social impacts, but cultural barriers persist, thereby, limiting this. By combining legislative reforms with stakeholder collaboration, including the Nigerian Bar Association and women's advocacy groups,

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<sup>221</sup> A Musa, *Pluralism and Property Rights in Nigeria* (Abuja: Legal Reform Press, 2020) 67–90.

<sup>222</sup> Funke Adebayo, 'Community Education and Women's Rights,' *African Journal of Legal Studies* [2021] (14) (3) 145–167.

Nigeria can create a framework that promotes substantive equity, ensuring property division empowers women while respecting the country's diverse legal and cultural landscape.

## **CHAPTER FIVE**

### **SUMMARY, CONCLUSION AND RECOMMENDATIONS**

#### **5.1 Summary**

This research critically examines the paradigm of property division in Nigerian family law, with a specific focus on the viability of equal sharing in divorce cases. Through a comprehensive analysis of existing legal frameworks, cultural influences, and socio-economic factors, this study sheds light on the complexities and challenges inherent in the current system. The key findings of this research are summarized below:

1. The existing legal framework governing property division in Nigeria is characterized by inherent ambiguities, inconsistencies, and gender biases, which frequently result in arbitrary and unjust outcomes for parties involved in divorce proceedings.

2. Cultural norms, socio-economic status, and patriarchal influences substantially impact property division, often superseding legal principles and leading to unequal distribution of marital assets that disproportionately disadvantages women and children.
3. The current system of property division in divorce cases frequently yields unfair and inequitable outcomes, with one party, typically the female spouse, being disadvantaged due to factors such as limited economic power, lack of awareness about their rights, and societal pressures.
4. There is a pressing need for comprehensive legal reforms that address the existing system's inadequacies, provide clearer guidelines for property division in divorce cases, and promote fairness, equity, and gender sensitivity in the distribution of marital assets.
5. The lack of clear guidelines and standards for property division in Nigerian law contributes to inconsistent and unpredictable outcomes, creating uncertainty and anxiety for parties involved in divorce proceedings.
6. The application of customary law and Islamic law in property division often perpetuates gender-based discrimination, further exacerbating the vulnerability of women in divorce cases.
7. The development of a more nuanced and context-specific approach to property division is essential to address the complex needs and circumstances of divorcing couples and their families in Nigeria.

## **5.2 Conclusion**

The critical analysis of property division in Nigerian family law reveals a complex interplay between statutory provisions, customary practices, and judicial discretion, which often undermines the feasibility of equal sharing in divorce cases. While the Matrimonial Causes Act provides a

framework for equitable distribution, its application is inconsistent, heavily influenced by patriarchal norms embedded in customary law and societal expectations. The principle of equal sharing, though theoretically appealing for promoting fairness, struggles against entrenched cultural practices that prioritize male contributions and ownership. This discord highlights the need for a reformed legal framework that balances equity with cultural realities, ensuring that property division reflects both spouses' contributions—monetary and nonmonetary—without perpetuating gender-based disparities.

Moreover, the viability of equal sharing is further constrained by practical challenges, such as inadequate documentation of assets, limited judicial training, and socioeconomic inequalities that disproportionately affect women. These factors not only complicate the enforcement of equitable principles but also expose the limitations of transplanting foreign legal concepts, like equal sharing, into Nigeria's pluralistic legal system. For equal sharing to gain traction, legislative amendments must clarify the criteria for property division, prioritizing contributions like homemaking and child-rearing alongside financial inputs. Additionally, public awareness campaigns and judicial sensitization are essential to shift societal perceptions and foster a more inclusive approach to matrimonial property rights.

In conclusion, while equal sharing holds transformative potential for addressing inequities in Nigerian divorce cases, its implementation requires a nuanced strategy that navigates cultural, legal, and economic barriers. Reforming family law to explicitly recognize diverse contributions and harmonize statutory and customary frameworks is critical to achieving just outcomes. Until such reforms are prioritized, the paradigm of property division will remain skewed, perpetuating systemic inequalities and undermining the pursuit of fairness in marital dissolution. A deliberate

move toward gender-neutral, contribution-based principles could pave the way for a more equitable future in Nigerian family law.

### **5.3 Contributions to Knowledge**

This study makes significant contributions to the discourse on property division in Nigerian family law by critically examining the viability of equal sharing in divorce cases, an area underexplored in existing legal scholarship. It provides a comprehensive analysis of the tension between statutory provisions under the Matrimonial Causes Act, customary law practices, and judicial discretion, highlighting how these dynamics perpetuate gender disparities. By deconstructing the paradigm of property division, the research exposes the limitations of applying equitable principles in a pluralistic legal system, offering fresh insights into the interplay of law, culture, and socioeconomic factors in shaping matrimonial property outcomes.

Furthermore, the study advances knowledge by proposing a contribution-based framework that recognizes both monetary and non-monetary inputs, such as homemaking and child-rearing, as critical to property division. This approach challenges the male-centric bias inherent in customary practices and judicial interpretations, advocating for a gender-neutral model that aligns with principles of fairness. The identification of practical barriers—such as inadequate asset documentation and limited judicial training—adds a pragmatic dimension to the scholarship, providing a foundation for targeted legal and policy reforms in Nigeria’s family law system.

Finally, this research contributes to global comparative family law by situating Nigeria’s experience within broader debates on equitable property distribution. It underscores the complexities of transplanting foreign legal concepts like equal sharing into culturally distinct contexts, offering lessons for other pluralistic legal systems. By recommending legislative clarity,

judicial sensitization, and public awareness as pathways to reform, the study lays the groundwork for future academic inquiry and practical interventions aimed at achieving just and inclusive property division outcomes in divorce proceedings.

#### **5.4 Areas for Further Studies**

The analysis of property division in Nigerian family law underscores a persistent gap between the equitable aspirations of statutory provisions and the realities shaped by customary norms and judicial practices. The Matrimonial Causes Act, while designed to promote fairness, is inconsistently applied, often favoring male contributions due to entrenched patriarchal values.

Equal sharing, though a compelling ideal, struggles against cultural practices that marginalize women's non-monetary roles, such as homemaking and child-rearing. This tension reveals the urgent need for a legal framework that explicitly values all forms of contribution to ensure gender-neutral outcomes.

Practical barriers further erode the feasibility of equal sharing. Inadequate asset documentation, limited judicial expertise, and socioeconomic disparities disproportionately disadvantage women, complicating equitable distribution. These challenges highlight the limitations of adopting foreign legal models without addressing Nigeria's unique socio-cultural context. Legislative reforms must prioritize clear criteria for property division, while judicial training and public awareness efforts are essential to shift entrenched biases and foster inclusive practices.

Ultimately, achieving equitable property division in Nigerian divorce cases demands a nuanced approach that bridges statutory intent and cultural realities. By recognizing diverse contributions and harmonizing legal frameworks, reforms can dismantle systemic inequalities. Without deliberate action, the promise of fairness in matrimonial property division will remain elusive,

perpetuating injustice in marital dissolution. Below are the ways in which the study contributes to knowledge:

1. This study enriches Nigerian family law scholarship by dissecting the interplay of statutory, customary, and judicial frameworks in property division. It illuminates how legal pluralism undermines equitable outcomes, offering a novel perspective on the challenges of implementing equal sharing in a culturally diverse context.
2. By proposing a model that equally values monetary and non-monetary contributions, the research challenges the male-centric biases in current practices. This framework provides a practical and theoretical foundation for redefining fairness in matrimonial property disputes.
3. The study highlights underexplored obstacles—such as poor asset documentation and inadequate judicial training—contributing a pragmatic lens to the discourse. These insights guide targeted interventions for legal and policy reform.
4. Situating Nigeria’s experience within international family law debates, the research underscores the complexities of adopting universal principles like equal sharing in pluralistic systems. It offers transferable lessons for other jurisdictions navigating similar tensions.
5. By recommending legislative clarity, judicial sensitization, and public awareness, the study lays a roadmap for systemic change. It serves as a catalyst for further academic and practical efforts to advance equitable property division in Nigeria and beyond.

## 5.5 Recommendations

Based on the findings of this study, the following recommendations are proposed:

1. The Nigerian government should undertake comprehensive legal reforms to address the existing system's inadequacies and provide clearer guidelines for property division in divorce cases.
2. Policymakers and legal practitioners should develop more nuanced and context-specific approaches to property division that consider the unique cultural, social, and economic contexts of each case.
3. The legal system should prioritize fairness and equity in property division, taking into account the contributions and needs of both parties involved in divorce proceedings.
4. Legal awareness and education programs should be implemented to inform the public, particularly women, about their rights and entitlements in property division.
5. Legal practitioners should receive training and capacity-building programs to enhance their understanding of property division laws and promote best practices in resolving property disputes.
6. Further research should be conducted to explore the experiences of divorcing couples and the impact of property division on their lives, informing the development of more effective and equitable approaches to resolving property disputes.
7. The application of customary and Islamic law in property division should be reviewed to ensure that it promotes fairness and equity, and does not perpetuate gender-based discrimination.

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